

SECOND EDITION:  
OR, THE  
FREE-BORN  
Subject's Inheritance,

CONTAINING,

- I. **MAGNA CHARTA**, The *Petition of Right*, The *Habeas Corpus Act*; and several other most useful *Statutes*; With **COMMENTS** upon each of them.
- II. The Proceedings in Appeals of *Mortgages*; The Work and Power of *Parliaments*; The *Qualifications* necessary for such as should be chosen to that great Trust: Also the Oath and Duty of Grand and Petty Jurors.
- III. The Terms of *Liberty of Conscience*, confirmed to *Protestant Dissenters*, by Act of *Parliament*, in the Second Year of the Reign of our gracious Sovereign Lord and Lady King William and Queen Mary.
- IV. An Abstract of the Penal Laws against *Papists Recusants, Priests and Jesuits*, &c.
- V. The Office and Duty of a *Constable, Churchwarden, Surveyor of the High-way, or Justice of the Peace* in all their respective *Qualifications*, in which the meanest Capacity may be enabled and instructed in the Performance of his Office.

L O N D O N,

Printed for *Stebb Harris*, in *Market-Lane*, over against *St. Andrew's Church*, 1701.

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**J. Fraser.**

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# TABLE

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## Material CONTENTS.

<b>T</b> HE Nature and Happiness of our English Govern- ment,	page 1. to p. 4.
Magna Charta faithfully recited,	p. 5. to p. 17.
A Comment upon Magna Charta,	p. 12. to p. 21.
'Tis but a Declaration of what the People had right to before,	p. 17.
The Occasion and Means of obtaining Magna Charta,	p. 18.
Council perswade King Hen. 3. to revoke Magna Charta, and the sad end of that wicked Councillor,	p. 19.
Liberties what,	p. 21.
Monopolies are against Magna Charta,	p. 22.
The King cannot send any Man out of England against his will,	p. 23.
Peers what,	p. 24.
Commitment, The necessary Circumstances, where Liberty Justice, its three Properties,	p. 25.
Judges are to obey no Commands from the King, though under the Great or Privy Seal (much less signified by any little whispering Courtier) against Law,	p. 26.
Protection when unlawful,	p. 27.
The Statute of Confirmation of the Charter,	p. 28.
A severe Curse of the Clergy against the Breakers of the Charter,	p. 31.
The Statute de Tallagio non Concedendo, That the King shall lay no Burthens on his People, but by their Consent in Parliament,	p. 32.

# The TABLE.

<i>A Comment thereupon,</i>	P. 33. to P. 37.
<i>There are Omissions and Errors in the common Printed Statute-Books,</i>	P. 37.
<i>The Statute of 25 Edw. 3. declaring what offences shall be Treason,</i>	P. 37.
<i>A Comment thereupon,</i>	P. 39. to P. 46.
<i>To Compass the Death of the King what,</i>	P. 40.
<i>A Colateral Heir to the Crown is not within this Statute,</i>	P. 41.
<i>Probably Attaint, an Error in the Statute-Book for probably Attaint,</i>	P. 41.
<i>Offences made Treason since this Statute,</i>	P. 45.
<i>The Statute 13. Car. 2. cap. 1. for safety of his Majesty's Person, &amp;c.</i>	P. 46.
<i>Notes thereupon,</i>	P. 52. to P. 57.
<i>There must be two, not only lawful, but credible Witnesses on this Statute,</i>	P. 54. 55.
<i>Within what time the Party must be questioned and indicted,</i>	P. 55.
<i>The Sentence or Judgment in High Treason, and the Signification of each branch thereof,</i>	P. 55.
<i>The King cannot allow a Lord convicted of Felony, the Honour of being Beheaded,</i>	P. 56.
<i>Challenge what, and to how many,</i>	P. 56.
<i>The Statute, 2 Edw. 3. cap. 2. In what cases only the King shall grant Pardons,</i>	P. 57.
<i>The Comment thereon,</i>	P. 59.
<i>The Nature, Form and Proceedings in case of Appeals of Murther, &amp;c. Particularly opened to the meanest Capacity,</i>	P. 61. to P. 74.
<i>Two Statutes, That a Parliament shall be holden once every Year,</i>	P. 68.
<i>The Comment.</i>	P. 70.
<i>The Act of the 16th Car. 2. That holding of Parliaments, shall not be discontinued above three Years at the most,</i>	P. 70.
<i>A notable Discourse of the Antiquity, Use and Power of PARLIAMENTS, and the Qualifications of such Gentlemen</i>	

# The TABLE.

Gentlemen as are fit to be chosen the Peoples Representatives,	P. 71. to P. 110.
Parliament, the Signification of the Word,	P. 71.
City what, and how it differs from a Borough,	P. 72.
Three Estates what, whether the Bishops one of them,	P. 72.
The Parliament has rights to order the Succession to the Crown, and he forfeits all his Goods and Chattels that denies it,	P. 72, and 74.
The particular Business of Parliaments,	P. 76.
To punish ill Favourites and corrupt Ministers of State,	P. 77.
Examples of great Offenders punished, committed, degraded, and sentenced by Parliament, and particularly some Parsons for pragmatical Preaching,	P. 77. to P. 80.
Reflections on some State-Divines,	P. 81.
The Statute of 8 Hen. 6. cap. 7. That only Free-holders should chuse Knights of the Shire,	P. 91.
The Petition of Right, 3 Car. 1. And the Kings Assent thereunto [left out in the Statute-Book.]	P. 91.
The Habeas Corpus Act, 31 Car. 2. Cap. 2.	P. 97.
The Comment thereupon,	P. 108.
An Act for the Benefit of Prisoners for Debt, that they shall not be lodged with Felons, &c.	P. 111.
An Act for regulating the Privy-Council, and taking away the Star-Chamber, 17 Car. 1. cap. 10.	P. 115.
Some Notes thereupon,	P. 122.
The Clause of the Act of 31 Car. 2. cap. 1. No Man shall be bound to Quarter Souldiers,	P. 124.
Terms for Liberty of Conscience to Dissenters as granted by a Statute of the Second of their Majesties Reign,	P. 124.
An Abstract of the several Laws in force against Popery and Papists,	P. 129. to 133.
Discourse of Furies, and the Advantages English Men enjoy thereby.	P. 133.
What Persons ought to be Fury-men, and how qualified,	P. 137.
Furors in Ancient Law-books, called Judges,	P. 138.
Of the Duty of Grand-Furies,	P. 139.
Their Oath,	P. 140.

## The TABLE.

<i>That Juries are Judges of Law, in some respects, as well as Fact,</i>	147. to p. 150.
<i>That Juries are not finable, or any way to be punished under pretence of going contrary to Evidence, or against the Judges directions,</i>	p. 150.
<i>The Conclusion. Bushell's Case, reported by the learned Sir John Vaughan, Licensed by the Lord Chancellor, the Lord Chief Justice North, and all the Judges then in England.</i>	p. 151.
<i>An exact Guide for Constables in the Duty of performing their Office in the sundry Particulars,</i>	p. 155.
<i>The Church-wardens Office and Trust, and what his Duty is in the Particulars,</i>	p. 173.
<i>The Office of the Surveyor and Scavenger, &amp;c.</i>	p. 179.

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THE  
PROEM.

**T**HE Constitution of our *English Government* (the best in the World) is no Arbitrary *Tyranny*, like the *Turkish Grand Seignior*, or the *French Kings*, whose Wills (or rather Lusts) dispose of the Lives and Fortunes of their unhappy Subjects; Nor an *Oligarchy*, where the great Ones (like Fish in the Ocean) prey upon, and live by devouring the Lesser at their pleasure: Nor yet a *Democracy* or popular State, much less an *Anarchy*, where all confusedly are *hail fellows, well met*. But a most excellently mixt or *qualified Monarchy*, where the King is vested with large *Prerogatives* sufficient to support Majesty, and restrain'd only from Power of doing himself and his People harm (which would be contrary to the very end of all Government, and is properly rather *weakness* than power) the Nobility adorn'd with Priviledges to be a *Screen* to Majesty, and a refreshing Shade to their Inferiours, and the *Commonalty* too, so guarded in their Persons and Properties by the Fence of Law, as renders them *Free-men*, not Slaves.

In *France* and other Nations, the meer Will of the Prince is *Law*, his Word takes off any Man's Head, imposeth Taxes, or seizes any Man's Estate, when, how,

## English Liberties.

and as often as he lifts; and if one be *Accused*, or but so much as suspected of any Crime, he may either presently Execute him, or Banish, or Imprison him at pleasure; or if he will be so gracious as to proceed by Form of their Laws, if any two *Villains* will but swear against the poor Party, his Life is gone. Nay, if there be *no Witnesses*, yet he may be put to the *Rack*, the Tortures whereof make many an *Innocent* Person confess himself guilty, and then with seeming *Justice* he is executed; or if he prove so stout as in Torments to deny the Fact, yet he comes off with *Disjoynted Bones*, and such Weakness as renders his Life a Burthen to him ever after.

But in *England*, the Law is both the *Measure* and the *End* of every Subject's Duty and Allegiance, each Man having a fixed Fundamental Right born with him, as to *Freedom of his Person*, and *Property in his Estate*, which he cannot be deprived of, but either by his consent, or some Crime, for which the Law has impos'd such a Penalty or Forfeiture. For all our Kings

(1) *Book of Oaths*, p. 1. & 3.

(2) *Bakers Cron.* fol. 741.

(3) *Book of Oaths* p. 216.

take a solemn Oath, (1) At their Coronation, to observe and cause the Laws to be kept, which was done by our present most gracious Sovereign: (2) Likewise all our Judges take an Oath, wherein amongst other points, they swear, (3) To do equal Law and Right to all the King's Subjects, Rich and Poor, and not to delay any Person of common Right for the Letters of the King, or of any other Person, or for any other Cause; But if any such Letters come to them, they shall proceed to do the Law, the same Letters notwithstanding: Therefore saith *Fortescue* (who was first Chief Justice, and afterwards Lord Chancellor to King Henry the 6th.) in his Book *de Laudibus Legum Angliæ*, cap. 9. Non potest Rex Angliæ, &c. The King of England cannot alter nor change the Laws of his Realm at his pleasure; For why, he governeth his People by Power not only Royal, but also Politick; If his Power over them were only Regal, then he might change the Laws of his Realm.



## English Liberties.

Realm, and charge his Subjects with Tallage and other Bur-  
dens without their consent, and such is the Dominion that  
the Civil Laws purport, when they cry, Quod principi pla-  
uit Legis habet Vigorem. The Prince's Pleasure has the  
force of a Law. But from this much differeth the Power of  
a King, whose Government over his People is Politick; For  
he can neither change Laws without the Consent of his Sub-  
jects, nor yet charge them with Impositions against their  
wills; Wherefore his People do frankly and freely enjoy and  
occupy their own Goods, being ruled by such Laws as they  
themselves desire. Thus Forrescue; with whom Accorda  
Brafson a Reverend Judge and Law-Author in the Reign  
of King Henry the Third, saying—Rex in Regno suo  
superiores habet Deum & Legem; The King in his Realm  
has two Superiors, God and the Law: for he is under the  
Directive, though not Coercive Power of the Law;  
and on the same Score, Judge Vaughan speaking of our  
Fundamental Laws which are Coeval with the Govern-  
ment, sticks not to say, The Laws of England were never  
the Dislates of any Conquerors Sword, or the Placita of  
good Will and Pleasure of any King of this Nation, nor to  
speak impartially and freely, the Results of any Parliament  
that ever sat in this Land. And the late cited Forrescue,  
in his 13 Chap. has a very apt Similitude to illustrate and  
demonstrate this, The Law (says he) taketh its name, a  
Ligand, to bind, for thereby the Politick Body is knit and  
preserv'd together, as the natural Body by the Bones and Si-  
naws, and Members, which retain every one their proper  
Functions; And as the Head of a Body natural cannot change  
his Sinews, nor cannot deny or withhold from his inferior  
Members, their peculiar Powers and several Nourish-  
ments of Blood and Spirits; no more can a King, which  
is the Head of a Body Politick, change the Laws of that  
Body, nor withdraw from his People their proper Substance,  
against their Wills and Consents in that behalf.



'Tis true, the Law it self affirms, *The King can do no wrong*, which proceeds not only from a Presumption that so excellent a Person *will do none*: But also because he acts nothing but *by Ministers*, which (from the lowest to the highest) are answerable for their doings, so that if a King in Passion should command *A.* to kill *B.* without process of Law, *A.* may yet be prosecuted by Indictment, or upon an Appeal (where no Royal Pardon is allowable) and must for the same be executed, for such Command notwithstanding.

This Original happy Frame of Government is truly and properly call'd an *English Man's Liberty*, a Priviledge not to exempt from the Law, but to be freed in Person and Estate, from Arbitrary Violence and Oppression; A greater Inheritance (saith Judge Coke) is deriv'd to every one of us from our Laws than from our Parents. For, without the former, what would the latter signify? And this Birth-right of *English Men*, shines most conspicuously in two things: 1. Parliaments. 2. Free  
Gifts.

By the first, the Subject has a share by his chosen Representatives in the *Legislative* (or Law-making) Power, for no new Laws binds the People of *England*, but such as are by common consent agreed on in that great Council.

By the Second, he has a share in the *Executive* part of the Law, no Causes being tryed, nor any Man adjudged to lose his Life, Member or Estate, but upon the *Verdict* of his Peers (or Equals) his Neighbours, and of his own Condition: these two Grand Pillars of *English Liberty*, are the Fundamental Vital Priviledges, whereby we have been, and are preserv'd more free and happy than any other People in the World, and (we trust) shall ever continue so; For whoever shall design to impair, pervert, or undermine either of these, do strike at the very Constitution of our Government, and ought to be prosecuted and punished with the utmost Zeal and Rigor. To cut down the Banks, and let in the Sea, or

to poyson all the *Springs and Rivers* in the Kingdom, would not be a greater Mischief; for this would only affect the present Age, but the other will ruine and enslave all our Posterity.

But besides these general *Paramount Priviledges*, which the *English* are estated in by the Original Constitution of their Government, there are others more particularly declared and expressed in divers *Acts of Parliament*, of which, several of the most remarkable and useful are here presented at large to the Reader, with some Notes thereupon, for his better understanding of the same.

*MAGNA CHARTA*, or the Great Charter made in the Ninth Year of King *Henry* the Third, and confirmed by King *Edward* the First, in the Eight and Twentieth Year of his Reign.

*Edward*, By the Grace of God, King of England, Lord of Ireland, and Duke of Guyan: To all Arch-bishops, Bishops, &c. We have seen the great Charter of the Lord *Henry*, sometimes King of England, our Father, of the Liberties of England; and these Words.

*Henry*, By the Grace of God, King of England, Lord of Ireland, Duke of Normandy and Guyan, and Earl of Anjou: To all Arch-bishops, Bishops, Abbots, Priors, Earls, Barons, Sheriffs, Provosts, Officers, and all Bailiffs, and other our faithful Subjects, which shall see this present Charter, Greeting. Know you, that we unto the Honour of Almighty God, and for the Salvation of the Souls of our Progenitors and Successors, Kings of England, to the Advancement of Holy Church, and Amendment of our Realm, of our meer and free will, have given and granted to all Arch-bishops, Bishops, Abbots, Priors, Earls, Ba-

rons, and to all Free-men of this our Realm, these Liberties following, to be kept in our Kingdom of England for ever.

## C H A P. I.

*A Confirmation of Liberties.*

**F**IRST, We have granted to God, and by this our present Charter have confirm'd for us and our Heirs for ever; That the Church of England shall be free, and shall have all her whole Rights and Liberties inviolable. (2.) We have granted also, and given to all the Free-men of our Realm, for us and our Heirs for ever, these Liberties under-written, to have and to hold to them and their Heirs for ever.

## C H A P. II.

*The Relief of the King's Tenants of full Age.*

**I**F any of our Earls or Barons, or any other which hold of us in chief by Knights Service, die, and at the time of Death, his Heir be of full Age, and oweth to us Relief, he shall have his Inheritance by the old Relief, that is to say, the Heir or Heirs of an Earl, for a whole Earldom, by one hundred Pounds: the Heir or Heirs of a Baron for a whole Barony, by one hundred Marks: the Heir or Heirs of a Knight, for one whole Knight's Fee, one hundred Shillings at the most. And he that hath less shall give less, according to the old Custom of the Fees.

## C H A P. III.

*The Wardship of an Heir within Age; The Heir a Knight.*

**B**UT if the Heir of any such be within Age, his Lord shall not have the Ward of him, nor of his Land, before that he hath taken of him Homage. (2.) And after that such an Heir hath been in Ward (when he is come to full Age) that is to say, to the Age of one and twenty Years, he shall have his Inheritance without Relief, and without time; so that if such an Heir being within Age be made Knight, yet nevertheless his Land shall remain in the keeping of his Lord unto the Term aforesaid.

## CHAP. IV.

*No waste shall be made by a Guardian in Wards Lands.*

**T**HE Keeper of the Land of such an Heir being within Age, shall not take of the Lands of the Heir but reasonable issues, reasonable Customs, and reasonable Services, and that without destruction, and waste of his Men and his Goods. (2.) And if we commit the Custody of any such Land to the Sheriff, or to any other, which is answerable unto us for the Issues of the same Land, and he make destruction or waste of those things that he hath in Custody, we will take of him amends and recompence therefore. (3.) And the Land shall be committed to two lawful and discreet Men of that Fee, which shall answer unto us for the Issues of the same Land, or unto him whom we will assign. (4.) And if we give or sell to any Man the Custody of any such Land, and he therein do make destruction or waste, he shall lose the same Custody. And it shall be assigned to two lawful and discreet Men of that Fee, which also in like manner shall be answerable to us, as afore is said.

## CHAP. V.

*Guardians shall maintain the Inheritance of their Wards: And of Bishopricks.*

**T**HE Keeper, so long as he hath the Custody of the Land of such an Heir shall keep up the Houses, Parks, Warrens, Ponds, Mills, and other things pertaining to the same Land, with the Issues of the said Land: And he shall deliver to the Heir, when he cometh to his full Age, all his Land, stored with Ploughs and all other things, at the least as he receiv'd it. All these things, shall be observed in the Custody of Arch-Bishopricks, Bishopricks, Abbies, Priories, Churches and Dignities vacant, which appertain to us: Except this, that such Custody shall not be sold.

## CHAP. VI.

*Heirs shall be Married without disparagement.*

**H**IRS shall be Married without Disparagement.

## English Liberties.

### CHAP. VII.

*A Widow shall have her Marriage, Inheritance and Quarentine. The King's Widow.*

**A** Widow after the Death of her Husband, Incontinent and without any difficulty, shall have her Marriage, and her Inheritance. (2.) And shall give nothing for her Dower, her Marriage, or her Inheritance, which her Husband and she held the Day of the Death of her Husband. (3.) And she shall tarry in the chief House of her Husband, by forty days after the Death of her Husband, within which days her Dower shall be assigned her (if it were not assigned her before) or that the House be a Castle. (4.) And if she depart from the Castle, then a competent House shall be forthwith provided for her, in the which she may honestly dwell, until her Dower be to her assigned, as it is aforesaid; and she shall have in the mean time her reasonable Expenses of the Common. (5.) And for her Dower shall be assigned unto her the Third part of all the Lands of her Husband, which were his during Coverture, except she were endowed of less at the Church door. (6.) No Widow shall be distrained to Marry her self: Nevertheless she shall find Surety, that she shall not Marry without our License and Assent (if she hold of us) nor without the Assent of the Lord, if she hold of another.

### CHAP. VIII.

*How Sureties shall be charged to the King.*

**W**e or our Bailiffs, shall not seize any Land or Rents for any Debt, as long as the present Goods and Chattels of the Debtor do suffice to pay the Debt, and the Debtor himself be ready to satisfy therefore. (2.) Neither shall the Pledges of the Debtor be distrained, as long as the principal Debtor is sufficient for the payment of the Debt. (3.) And if the principal Debtor fail in the payment of the Debt, having nothing wherewith to pay, or will not pay where he is able, the Pledges shall answer for the Debt. (4.) And if they will, they shall have the Lands and Rents of the Debtor

## English Liberties.

Debtor until they be satisfied of that which they before  
payed for him, except that the Debtor can shew himself  
to be acquitted against the said Sureties.

### CHAP. IX.

*The Liberties of London, and other Cities and Towns  
confirmed.*

**T**HE City of London shall have all the old Liberties  
and Customs which it hath been used to have. More-  
over, we will and grant, that all other Cities and Bo-  
roughs, Towns, and the Barons of the five Ports, and  
all other Ports, shall have all their Liberties and free  
Customs.

### CHAP. X.

*None shall distrain for more Service than is due.*

**N**O Man shall be distrained to do more Service for  
a Knights Fee, nor for any Freeholder, than there-  
fore is due.

### CHAP. XI.

*Common-Pleas shall not follow the King's Court.*

**C**OMMON-Pleas shall not follow our Court, but shall  
be holden in some place certain.

### CHAP. XII.

*Here, and before whom Assizes shall be taken. Adjourn-  
ment for Difficulty.*

**A**ssizes of *Novel Disseisin* and of *Mortdancesster*, shall  
not be taken but in the Shires, and after this man-  
ner: if we be out of this Realm, our Chief Justicers  
shall send our Justicers through every County once in  
the Year: Which, with the Knights of the Shire, shall  
take the said Assizes in those Counties. (2.) And those  
things that at the coming of our aforesaid Justicers, be-  
ing sent to take those Assizes in the Counties, cannot be  
determined, shall be ended by them in some other place  
of their Circuit. (3.) And those things which for diffi-  
culty of some Articles cannot be determined by them,  
shall be referred to our Justicers of the Bench, and there  
shall be ended.



## English Liberties.

## CHAP. XIII.

*Affizes of Darrein Presentment.*

**A**ffizes of Darrein Presentment, shall be always taken before our Justicers of the Bench, and there shall be determined.

## CHAP. XIV.

*How Men of all sorts shall be amerced, and by whom.*

**A** Free-man shall not be amerced for a small Fault, but after the manner of the Fault. And for a great Fault after the Greatness thereof, saving to him his contentement. (2.) And a Merchant likewise, saving to him his Merchandize. (3.) And any others Villain than ours shall be likewise amerced, saving his Wainage, if he fall into our mercy. (4.) And none of the said Amerciaments shall be assessed, but by the Oath of honest and lawful Men of the Vicinage. (5.) Earls and Barons, shall not be amerced, but by their Peers, and after the manner of their offence. (6.) No Man of the Church shall be amerced after the quantity of his Spiritual Benefice, but after his Lay-tenement, and after the quantity of his offence.

## CHAP. XV.

*Making of Bridges and Banks.*

**N**O Town nor Free-man shall be distrained to make Bridges nor Banks, but such as of old time, and or right have been accustomed to make them in the time of King Henry our Grandfather.

## CHAP. XVI.

*Defending of Banks.*

**N**O Banks shall be defended from henceforth but such as were in defence in the time of King Henry our Grandfather, by the same places, and the same bounds as they were wont to be in his time.

## CHAP. XVII.

*Folding Pleas of the Crown.*

**N**O Sheriff, Constable, Escheator, Coroner, nor any other our Bailiffs, shall hold Pleas of our Crown.

## CHAP.



# English Liberties.

11

## CHAP. XVIII.

*The King's Debtor dying, the King shall be first paid.*

**I**F any that holdeth of us Lay-fee do die, and our Sheriff or Bailiff do shew our Letters Patents of our Summons for Debt, which the dead Man did owe to us: It shall be lawful to our Sheriff or Bailiff, to Attach and Inroll all the Goods and Chattels of the Dead, being found in the said Fee, to the value of the same Debt, by the Sight and Testimony of lawful Men; So that nothing thereof be taken away, until we be clearly paid off the Debt. (2.) And the residue shall remain to the Executors. (3.) And if nothing be owing to us, all the Chattels shall go to the use of the Dead (saving to his Wife and Children the reasonable Parts.)

## CHAP. XIX.

*Purveyance for a Castle.*

**N**O Constable, nor his Bailiff shall take Corn or other Chattels of any Man, if the Man be not of the Town where the Castle is, but he shall forthwith pay for the same, unless that the Will of the Seller was to respite the Payment. (2.) And if he be of the same Town, the Price shall be paid unto him within forty days.

## CHAP. XX.

*Doing of Castle Ward.*

**N**O Constable shall distrain any Knight for to give Money for keeping of his Castle, if he himself will do it in his proper Person, or cause it to be done by another sufficient Man, if he may not do it himself for a reasonable Cause. (2.) And if we do lead or send him in an Army, he shall be free from Castle Ward for the time that he shall be with us in Fee in our Host, for the which he hath done Service in our Wars.

## CHAP. XXI.

*Taking of Horses, Carts and Woods.*

**N**O Sheriff nor Bailiff of ours, nor any other, shall take the Horses or Carts of any Man to make Carriage, except he pay the old price limited, that is to say,

for Carriage with two Horses, 10*d.* a day, for three Horses 14*d.* a day. (2.) No demesne Cart of any spiritual Person or Knight, or any Lord, shall be taken by our Bailiffs. (3.) Nor we, nor our Bailiffs, nor any other shall take any Man's Wood for our Castles, or other our Necessaries to be done, but by the License of him whose the Wood is.

## CHAP. XXII.

*How long Felons Lands shall be holden by the King.*

**W**E will not hold the Lands of them that be Convict of Felony but one Year and one Day, and then those Lands shall be delivered to the Lords of the Fee.

## CHAP. XXIII.

*In what place Wears shall be put down.*

**A**LL Wears from henceforth shall be utterly put down by Thames and Medway, and through all England but only by the Sea-Coasts.

## CHAP. XXIV.

*In what Case a Precipe in Capite, is not grantable.*

**T**HE Writ that is called *Precipe in Capite*, shall be from henceforth granted to no Person of any Free-hold, whereby any Free-man may lose his Court.

## CHAP. XXV.

*There shall be but one Measure throughout the Realm.*

**O**NE Measure of Wine shall be through our Realm, and one Measure of Ale, and Measure of Corn, that is to say, the Quarter of London. (2.) And one breadth of died Cloth, Ruffets, and Habergests, that is to say, two yards within the Lists. (3.) And it shall be of Weights as it is of Measures.

## CHAP. XXVI.

*Inquisition of Life and Member.*

**N**othing from henceforth shall be given for a Writ of Inquisition, nor taken of him that prayeth Inquisition of Life or of Member, but it shall be granted freely, and not denied.

## English Liberties.

13

### CHAP. XXVII.

*Tenure of the King, in Socage, and of another by Knights Service. Petit Serjeantry.*

**I**F any do hold of us by Fee-farm, or by Socage, or Burgage, and he holdeth Lands of another by Knights Service, we will not have the Custody of his Heir, nor of his Land, which is holden of the Fee of another, by reason of that Fee-farm, Socage, or Burgage. (2.) Neither will we have the Custody of such Fee-farm, or Socage, or Burgage, except Knights Service be due unto us out of the same Fee-farm. (4.) We will not have the Custody of the Heir, or of any Land, by occasion of any Petit Serjeantry that any Man holdeth of us by Service, to pay a Knife, an Arrow, or the like.

### CHAP. XXVIII.

*Wager of Law shall not be without Witnesses.*

**N**O Bailiff from henceforth, shall put any Man to his open Law, nor to an Oath, upon his own bare saying, without faithful Witnesses brought in for the same.

### CHAP. XXIX.

*None shall be Condemned without Trial. Justice shall not be sold or deferred.*

**N**O Free-man shall be taken or Imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed or exiled, or any otherwise destroyed, nor we will not pass upon him, nor condemn him, but by lawful Judgment of his Peers, or by the Law of the Land. (2.) We will sell to no Man, we will not deny or defer to any Man either Justice or Right.

### CHAP. XXX.

*Merchants, Strangers coming into this Realm, shall be well used.*

**A**ll Merchants (if they were not openly prohibited before) shall have their safe and sure Conduct to depart out of England, to come into England, to tarry in and go through England, as well by Land as by Sea, to buy and sell without any manner of evil tools, by the old and rightful Customs, except in time of War. (2.) And

if they be of a Land making War against us, and be found in our Realm at the beginning of the Wars, they shall be Attached without harm of Body and Goods, until it be known unto us or our Chief Justice, how our Merchants be intreated there in the Land making War against us. (3.) And if our Merchants be well intreated there, theirs shall be likewise with us.

## CHAP. XXXI.

*Tenure of a Barony coming into the King's Hand by Eschete.*  
**I**F any Man hold of any Eschete, as of the Honour of Wallingford, Nottingham, Boloin, or of any other Eschetes which be in our hand, and are Baronies, and dye, his Heir shall give none other Relief, nor do none other Service to us than he should to the Baron, if it were in the Barons hand. (2.) And we in the same wise should hold it as the Baron held it, neither shall we have by occasion of any Baron or Eschete any Eschete or Keeping of any of our Men, unless he that held the Barony or Eschete, otherwise held of us in Chief.

## CHAP. XXXII.

*Lands shall not be aliened to the prejudice of the Lord's Service.*

**N**O Free-man, from henceforth shall give or sell any more of his Land, but so that of the Residue of the Lands, the Lord of the Fee may have the Services due to him, which belongeth to the Fee.

## CHAP. XXXIII.

*Patrons of Abbies, shall have the Custody of them in the time of Vacation.*

**A**LL Patrons of Abbies, which have the Kings Charter of England, of Advowson, or have old tenure or possession in the same, shall have the Custody of them when they fall void, as it hath been accustomed, and as it is afore declared.

## English Liberties.

15

### CHAP. XXXIV.

*In what only Case a Woman shall have an Appeal of Death.*  
**N**O Man shall be taken or imprisoned upon the Appeal of a Woman, for the Death of any other than of her Husband.

### CHAP. XXXV.

*At what time shall be kept a Country Court, Sheriffs turn, and a Lees.*

**N**O Country from henceforth shall be holden, but from Month to Month; and where greater time hath been used, there shall be greater. (2.) Nor any Sheriff or his Bailiff shall keep his turn in the Hundred, but twice in the Year: and no where but in due place and accustomed, that is to say, once after *Easter*, and again after the Feast of Saint *Michael*. (3.) And the view of *Frank-pledge* shall be likewise at the Feast of St. *Michael* without occasion. So that every Man have his Liberties which he had, or used to have in the time of King *Henry* our Grandfather, or which he hath purchased since. (4.) The view of *Frankpledge* shall be so done, that our peace may be kept. (5.) And that the Tything be wholly kept as it hath been accustomed. (6.) And that the Sheriff seek no occasions, and that he be content with so much as the Sheriff was wont to have for his view-making in the time of King *Henry* our Grandfather.

### CHAP. XXXVI.

*No Land shall be given in Donmain.*

**I**T shall not be lawful from henceforth to any one to give his Lands to any Religious House, and to take the same Land again to hold of the same House. Nor shall it be lawful to any House of Religion to take the Lands of any and to Lease the same to him of whom he received it: If any from henceforth give his Lands to any Religious House, and thereupon be Convict, the Gift shall be utterly void, and the Land shall Accrue to the Lord of the Fee.

## CHAP. XXXVII.

*A Subsidy in respect of this Charter, and the Charter of the Forest, granted to the King.*

**E**scuage from henceforth shall be taken, like as it was wont to be in the time of King Henry our Grandfather, reserving to all *Arch-bishops, Bishops, Abbots, Priors, Templers, Hospitallers, Earls, Barons*, and all Persons as well Spiritual as Temporal, all their free Liberties and free Customs which they have had in time passed: (2.) And all these Customs and Liberties aforesaid, which we have granted to be holden within this our Realm, as much as as appertaineth to us and our Heirs, we shall observe. (3.) And all Men of this our Realm, as well Spiritual as Temporal (as much as in them is) shall observe the same against all Persons in likewise. (4.) And for this our Gift and Grant of these Liberties, and of other contained in our Charter of Liberties of our Forest, the Arch-bishops, Bishops, Abbots, Priors, Earls, Barons, Knights, Freeholders, and other our Subjects, have given unto us the fifteenth part of all their moveables. (5.) And we have granted unto them on the other part, that neither we nor our Heirs shall procure or do any thing, whereby the Liberties in this Charter contained, shall be infringed or broken. (6.) And if any thing be procured, by any Person, contrary to the Premises, it shall be had of no force nor effect. These being Witnesses, Lord B. Arch-bishop of *Canterbury*, E. Bishop of *London*, &c.

We, ratifying and approving these Gifts and Grants aforesaid, confirm and make strong all the same for us and our Heirs, perpetually; and by the Tenour of these presents, do renew the same, willing and granting for us and our Heirs, that this Charter, and all and singular his Articles for ever shall be stedfastly, firmly and inviolably observed. And if any Article in the same Charter contained, yet hitherto peradventure hath not been kept, we will, and by Authority Royal Command from henceforth firmly they be observed. In Witness whereof we have caused these our Letters Patents to be made. T.

*Edmund*



*Edward* our Son at *Westminster*, the twenty eighth day of *March*, In the twenty eighth Year of our Reign.

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## Notes on *Magna Charta*.

**T**HIS Excellent Law holds the first place in our Statute Books, for though there were no doubt many Acts of Parliament long before this, yet they are not now extant: 'tis called *Magna Charta*, or the Great Charter, not in respect of its Bulk, but in regard of the great Importance and Weight of the Matters therein contained; it is also stiled *Charta Libertatum Regni*, the Charter of the Liberties of the Kingdom, and upon great reason (saith *Cook* in his Proem) is it so called from the effect, *Quia liberos facit*, because it makes and preserves the People free.

Though it run in the Stile of the King *as a Charter*, yet (as my Lord *Cook* well observes on the 38 Chapter) it appears to have passed in Parliament; for there was then a fifteenth granted to the King, by the Bishops, Parls, Barons, Free-tenants and People, which could not be but in Parliament, nor was it unusual in those times to have Acts of Parliament in a form of a Charter: as you may read in the Princes case, *Co. Rep. L. 8.*

Likewise though it be said here, that the *King hath given and granted these Liberties*, yet they must not be understood as meer *Emanations* of Royal Favour, or new bounties granted, which the People could not justly challenge, or had not a *Right* unto before; For the Lord *Cook* at divers places asserts, and all Lawyers know, that this Charter is for the most part only *Declaratory* of the principal Grounds of the Fundamental Laws and Liberties of *England*; no new Freedom is hereby granted; but a Restitution of such as lawfully they had before, and to free them of what had been usurped and encroached upon them by any power whatsoever; and therefore you may see this Charter



Charter often mentions Sua Fura, their Rights, and Libertates suas, their Liberties, which shews they had them before, and that the same now were confirmed.

As to the occasion of this Charter, it must be noted, that our Ancestors the *Saxons* had with a most equal poize and temperament, very wisely contriv'd their Government, and made excellent provisions for their Liberties, and to preserve the People from oppression, and when William the Norman made himself Master of the Land, though he be commonly called the *Conqueror*, yet in truth he was not so, and I have known several Judges that would reprehend any Gentleman at the Bar that casually gave him that Title; for though he killed Harold the Usurper, and routed his Army, yet he pretended a Right to the Kingdom, and was admitted by Compact, and did take an Oath to observe the *Laws and Customs*.

But the Truth is, he did not perform that Oath so as he ought to have done; and his Successors, *William Rufus*, King *Stephen*, *Henry the First*, and *Richard* likewise, made frequent *Encroachments* upon the Liberties of their People, but especially King *John* made use of so many illegal Devices to drain them of Money, that wearied with intolerable Oppressions, they resolved to oblige the King to grant them their Liberties, and to promise the same should be observed; which King *John* did in Runnymede between *Stains* and *Windsor*, by two Charters, one called *Charta Libertatum*, *The Charter of Liberties* (the Form of which you may read in *Math. Paris*, Fol. 246, and is in effect the same with this here recited) the other the *Charter of the Forest*, Copies of which he sent into every County, and commanded the Sheriffs, &c. to see them fulfilled.

But by ill Council he quickly after began to violate them as much as ever, whereupon Disturbances and great Miseries arose both to himself and the Realm.

The Son and Successor of this King *John* was *Henry the Third*, who in the 19th Year of his Reign Renewed and Confirmed the said Charters, but within two Years af-

ter Cancelled them by the pernicious Advice of his Favourites, and particularly *Hubert de Burgh* whom he had made Lord Chief Justice; one that in former times had been a great Lover of his Country, and a well deserving Patriot, as well as learned in the Laws, but now to make this a step to his Ambition (which ever Rideth without Reins) perswaded and humored the King, that he might avoid the Charters of his Father King *John* by Dureffe, and his own Great Charter, and *Charta de Foresta* also, for that he was *within Age* when he granted the same; whereupon the King in the Eleventh Year of his Reign, being then of full Age, got one of the great Charters, and of the Forreft, into his hands, and by the Council principally of this *Hubert* his Chief Justice, at a Council holden at *Oxford*, unjustly Cancelled both the said Charters (notwithstanding the said *Hubert de Burgh* was the primier Witness of all the Temporal Lords to both the said Charters) whereupon he became in high favour with the King, insomuch that he was soon after (*viz.* the 10th of *December* in the 13th Year of that King) Created (to the highest Dignity that in those times a Subject had) to be an Earl, *viz.* of *Kent*. But soon after (for Flatterers and Humorists have no sure Foundation) he fell into the Kings heavy Indignation, and after many fearful and miserable Troubles, he was justly, and according to Law Sentenced by his Peers in an open Parliament, and justly Degraded of that Dignity which he unjustly had obtained by his Counsel for Cancelling of *Magna Charta*, and *Charta de Foresta*.

In the 9th Chap. of this great Charter, all the Ancient Liberties and Customs of *London*, are Confirmed and preserved, which is likewise done by divers other Statutes, as 14 *Edw.* 3. Chap. 2, &c.

The 29th Chap. NO FREE-MAN SHALL BE TAKEN, &c. deserves to be written in Letters of Gold, and I have often wondred the Words thereof are not inscribed in Capitals on all our Courts of Judicature, Town-Halls, and most public Edifices; they are the Elixir of

our *English* Freedoms, the Store-house of all our Liberties. And because my Lord Cook in the second Part of his Institutes, has many excellent Observations, I shall here Recite his very words. This Chapter containeth nine several Branches:

1. *That no Man be taken or Imprisoned, but per Legem terra*, that is, by the Common-Law, Statute-Law, or Custom of *England*: For these words, *per Legem terra*, being towards the End of this Chapter, do refer to all the precedent Matters in this Chapter; and this hath the first Place, because the Liberty of a Man's Person is more precious to him than all the rest that follow, and therefore it is great Reason that he should by Law be Relieved therein, if he be wronged, as hereafter shall be shewed.

2. *No Man shall be disseised*, that is, put out of Seisin, or dispossessed of his Free-hold, that is, Lands or Livelyhood, or of his Liberties or free-Customs, that is, of such Franchises and Freedoms, and free-Customs as belong to him, by his Free Birth-Right, unless it be by the lawful Judgment, that is, Verdict of his Equals (that is, of Men of his own Condition) or by the Law of the Land, that is (to speak it once for all) by the due Course and process of Law.

3. *No Man shall be outlawed*, made an *Exlex*, put out of the Law, that is, deprived of the Benefit of the Law, unless he be outlawed according to the Law of the Land.

4. *No Man shall be Exiled or Banished out of his Country*, that is, *nemo perdet patriam*, no Man shall lose his Country, unless he be Exiled according to the Law of the Land.

5. *No Man shall in any sort be destroyed* (*Destruere id est quod prius structum & factum fuit penitus evertere & diruere*.) unless it be by the Verdict of his Equals, or according to the Law of the Land.

6. *No Man shall be Condemned at the King's Suit*, either before the King in his Bench, where the Pleas are

Coram.

*Coram Regs* (and so are the Words, *Nec super eum ibimus*, to be understood;) nor before any other Commissioner or Judge whatsoever, and so are the Words, *Nec super eum mittimus*, to be understood, but by the Judgment of his Peers, that is, Equals, or according to the Law of the Land.

7. We shall sell to no Man Justice or Right.
  8. We shall deny to no Man Justice or Right.
  9. We shall defer to no Man Justice or Right.
- Each of these we shall briefly explain.

1. No Man shall be taken (that is) Restrained of Liberty by Petition or Suggestion to the King or his Council, unless it be by Indictment or presentment of good and lawful Men, where such deeds be done. This Branch and divers other parts of this Act have been notably explained and Construed by divers Acts of Parliament, several of which you will find Recited hereafter in this Book.

2. No Man shall be Disseised, &c. Hereby is intended that Lands, Tenements, Goods and Chattels, shall not be seized into the King's Hands contrary to this great Charter, and the Law of the Land; nor any Man shall be disseised of his Lands or Tenements, or dispossessed of his Goods or Chattels contrary to the Law of the Land.

A Custom was alledged in the Town of C. that if the Tenant cease by Two Years, that the Lord should enter into the Freehold of the Tenant, and hold the same until he were satisfied of the Arrearages: it was adjudged a Custom against the Law of the Land to enter into a Man's Freehold in that case, without Action or Answer.

King Henry 6th Granted to the Corporation of Diere within London, power to search, &c. And if they found any Cloath dyled with Log-Wood, that the Cloath should be Forfeited: And it was adjudged that this Charter concerning the Forfeiture was against the Law of the Land, and this Statute; For no Forfeiture can grow by Letters Patents.

No Man ought to be put from his Livelyhood without Answer.

3. *No Man Outlawed*] That is, barred to have the Benefit of the Law. And note to this word *Outlawed*, these words, *Unless by the Law of the Land*, do Refer [*Of his Liberties*] This word hath three Significations:

1. As it hath been said, it signifieth the Laws of the Realm, in which respect this Charter is called *Charta Libertatum*, as aforesaid.

2. It signifieth the *Freedom the Subjects of England* have: for example, the Company of *Merchant-Tailors of England*, having power by their Charter to make Ordinances, made an Ordinance that every Brother of the same Society, should put the one half of his Cloaths to be dressed by some Cloth-Workers, Free of the same Company, upon pain to Forfeit 10 s. &c. And it was adjudged that this Ordinance was against Law, because it was against the Liberty of the Subject, for every Subject hath Freedom to put his Cloaths to be dressed by whom he will, & sic de similibus. And so it is, if such or the like Grant had been made by his Letters Patents.

3. *Liberties* signified the *Franchises and Privileges* which the Subjects have of the Gift of the King, as the Goods and Chattels of *Felons, Outlaws* and the like; or which the Subject claims by Prescription, as *wreck, waife, Straic*, and the like.

So likewise and for the same Reason, if a Grant be made to any Man to have the Sole making of *Cards*, or the Sole dealing with any other Trade, that Grant is against the Liberty and Freedom of the Subject, that before did or lawfully might have used that Trade, and consequently against this great Charter.

Generally all Monopolies are against this great Charter, because they are against the Liberty and Freedom of the Subject, and against the Law of the Land.

4. *No Man Exiled*, that is, Banisht, or forced to depart or stay out of *England* without his Consent. By the Law of the Land, no Man can be *Exiled* or *Banished* out of his Native Country, but either by *Authority of Parliament*, or in Case of Abjuration for Felony by the Common-Law; and so when our Books, or any Record, speak of *Exile*, or *Banishment*, other than in Case of Abjuration, it is to be intended to be done by *Authority of Parliament*, as *Belknap* and other Judges, &c. Banished into *Ireland*, in the Reign of *Rich.* the Second.

This is a beneficial Law, and is construed benignly; and therefore the King cannot send any Subject of *England* against his will to serve him out of this Realm, for that should be an *Exile*, and he should *perdere Patriam*: no, he cannot be sent against his will into *Ireland*, to serve the King or his Deputy there, because it is out of the Realm of *England*; For if the King might send him out of his Realm to any place, then under pretence of Service, as Ambassador or the like, he might send him into the furthest Part of the World, which being an *Exile*, is prohibited by this Act.

5. *No Man destroyed*——That is, forejudged of Life or Limb, or put to Torture or Death, every oppression against Law by colour of any usurped Authority is a kind of Destruction. And the words *Aliquo modo* (any other-wise) are added to this Verb *destroyed*, and to no other Verb in this Chapter, and therefore all things by any manner of means tending to Destruction are prohibited; as if a Man be accused or Indicted of Treason or Felony, his Land or Goods cannot be granted to any, no not so much as by promise, nor any of his Lands or Goods seized into the King's hands before he is Attainted; For when a Subject obtaineth a Promise of the Forfeiture, many times undue means and more violent prosecution is used for private Lucre, tending to Destruction, than the quiet and just Proceeding of the Law would permit, and the Party ought to live of his own until Attainder.



6. *By lawful Judgment of his Peers,*] That is by his Equals, Men of his own Rank and Condition. The general Division of Persons by the Law of England is either *one that is Noble*, and in respect of his Nobility of the Lord's House of Parliament, or *of one of the Commons*, and in respect thereof, of the House of Commons in Parliament. And as there be divers Degrees of Nobility, as Dukes, Marquesses, Earls, Viscounts and Barons, and yet all of them are comprehended under this word *Peers*, and are *Peers of the Realm*; so of the Commons, there be Knights, Esquires, Gentlemen, Citizens, and Yeomen, and yet all of them of the Commons of the *Realm*. And as every of the Nobles is one a Peer to another, though he be of a several Degree, so it is of the Commons; and as it hath been said of Men, so doth it hold of Noble Women, either by Birth or Marriage.

And forasmuch, as this Judgment by Peers is called *lawful*, it shews the Antiquity of this manner of Trial: It was the Ancient, accustomed, Legal Course long before this Charter.

*Or by the Law of the Land.*] That is, by due process of Law, for so the Words are expressly expounded by the Stat. of 37 *Edw. 3. Chap. 8.* And these words are specially to be referred to those foregoing, to whom they relate. As none shall be condemn'd without a lawful Tryal by his Peers, so none shall be taken, Imprison'd or put out of his Free-hold, without due process of the Law, that is by the Indictment or Presentment of good and lawful Men of the Place, in due manner, or by Writ Original of the Common-Law.

Now, seeing that no Man can be taken, Arrested, Attached or Imprisoned, but by due process of Law, and according to the Law of the Land, these Conclusions hereupon do follow.

1. That the Person or Persons which commit any, must have lawful Authority.



2. It is necessary that the Warrant or Mittimus be lawful, and that must be in Writing under his Hand and Seal.

3. The Cause must be contained in the Warrant, as for Treason, Felony, &c. Suspicion of Treason or Felony, or the like particular Crime: for if it do not thus specify the Cause, if the Prisoner bring his *Habeas Corpus*, he must be discharged, because no Crime appears on the Return; nor is it in such Case any Offence at all, if the Prisoner make his escape; whereas if the Mittimus contain the Cause, the Escape would respectively be Treason or Felony, though in Truth he were not Guilty of the first Offence. And this mentioning the Cause, is agreeable to Scripture, *Acts 5.*

4. The Warrant or Mittimus containing a lawful Cause, ought to have a lawful Conclusion, &c. And him safely to keep until he be delivered by Law, &c. and not until the Party committing shall further Order.

If any Man by colour of any Authority, where he hath not any in that particular Case, shall presume to Arrest or Imprison any Man, or cause him to be Arrested or Imprisoned, this is against this Act, and it is most hateful, when it is done by Countenance of Justice. King *Edw. the 6th.* did Incorporate the Town of *St. Albans*, and granted to them to make Ordinances, &c. they made a by-law upon pain of Imprisonment, and it was adjudged to be against this Statute of *Magna Charta*; so it had been, if such an Ordinance had been contained in the Patent it self.

*We will sell to no Man, deny to no Man, &c.]* This is spoken in the Person of the King, who in Judgment of Law in all his Courts of Justice is present; and therefore every Subject of this Realm, for injury done to him in *Bonis, Terris, vel Personis*, in Person, Lands or Goods, by any other Subject, Ecclesiastical or Temporal, whatever he be without exception, may take his Remedy by the Course of the Law, and have Justice and Right for

the Injury done him, *Freely* without sale, *Fully* without any denial, and *Speedily* without delay; for, Justice must have three Qualities, it must be *Libera*, free, for nothing is more odious than Justice set to sale; *Plena*, *Full*, for Justice ought not to limp, or be granted Piece-meal; and *Celeris*, *speedy*: *Quia Dilatio est quidam negatio*, Delay is a kind of denial: And when all these meet, it is both Justice and Right.

*We will not deny nor delay any Man, &c.*] These words have been excellently expounded by latter Acts of Parliament, that by no means common Right or common Law should be disturbed or delayed; no, though it be commanded under the *Great Seal* or *Privy Seal*, *Order*, *Writ*, *Letters*, *Message* or *Commandment* whatsoever, either from the *King* or any other; and that the Justices shall proceed, as if no such Writs, Letters, Order, Message, or other Commandment were come to them: all our Judges swear to this; for 'tis part of their Oaths, so that if any shall be found wresting the Law to serve a Court Turn, they are perjur'd as well as unjust. The Common-Laws of the Realm should by no means be delayed, for the Law is the surest Sanctuary that a Man can take, and the strongest Fortrefs to protect the weakest of all; *Lex est tutissima Cavis*, the Law is a most safe Head piece, and *sub Clypeo legis Nemo decipitur*, no Man is deceived whilst the Law is his Buckler: but the King may stay his own Suit, as a *Capias pro fine* for the King may Respite his Fine and the like.

All Protections that are not Legal, which appear not in the Register, nor warranted by our Books, are expressly against this Branch, *nulli differemus*, we will not delay any Man: as a Protection under the great Seal Granted to any Man, directed to the Sheriffs, &c. and commanding them that they shall not Arrest him during a certain Time at any other Man's Suit, which hath words in it, *Peri Prærogativam nostram quam nolumus esse Arguendam*; by our *Prærogative*, which we will not have disputed; yet such Protections have been argued by the Judges

Judges, according to their Oath and Duty, and adjudged to be void. As *Mich. 11. H. 7. Rot. 124.* a Protection granted to *Holmes* a Vinter of *London*, his Factors Servants and Deputies, &c. Resolved to be against Law, *Pasch. 7. H. 8. Rot. 66.* such a Protection disallowed, and the Sheriff amerced for not executing the Writ, *Mich. 13. and 14. Eliz.* in *Hitchcocks* Case, and many other of latter time; And there is a notable Record of ancient time in *22 E. 1. John de Merstals Case*; *Non pertinet ad Vicecomitem de protectione Regis Judicare, imo ad Curiam.*

*Justice or Right*]. We shall not sell, deny or delay Justice and Right; neither the End, which is *Justice*; nor the mean whereby we may attain to the End, and that it is the Law: Right, is taken here for Law, in the same Sence that Justice often is so called. 1. Because it is the right Line, whereby Justice distributive is Guided and Directed; and therefore all the Commissioners of Oier and Terminer, of Gaol-delivery, of the Peace, &c. have this Clause, *Facturi quod ad Justitiam pertinet, secundum Legem & Consuetudinem Anglie*; that is, to do Justice and Right, according to the Rule of the Law and Custom of *England*: and that which is called Common-Right in *2 E. 3.* is called Common-Law in *14 E. 3.* &c. and in this sence it is taken, where it is said, *ita quod sit Rectus in Curia, id est Legi in Curia.*

2. The Law is called *Rectum*, because it discovereth that which is Tort, Crooked or Wrong; for as Right signifieth Law, so Tort, Crooked or Wrong, signifieth Injuries, and *Injuria est contra Jus*, Injury is against Right: *Recta Linea est index sui et obliqui*, a right Line is both declaratory of it self and the oblique. Hereby the crooked Cord of that which is called *Discretion* appeareth to be unlawful, unless you take it as it ought to be, *discretio est discernere per Legem, quid sit Justum*, discretion is to discern by the Law what is just.

3. It is called *Right*, because it is the best Birth-right the Subject hath, for thereby his Goods, Lands, Wife and

and Children, his Body, *Life, Honor* and *Estimation* are protected from Injury and Wrong: *Major Hereditas venit unicuique nostrum à Jure & Legibus, quàm à Parentibus; a greater Inheritance descends to us from the Laws, than from our Progenitors.*

Thus far the very words of that Oracle of our Law, the sage and learned Coke; which so fully and excellently explain this incomparable Law, that it will be superfluous to add any thing further thereunto.

*A Confirmation of the Charters of the Liberties of England, and of the Forest, made in the 35th Year of Edw. the First.*

**E**dward by the Grace of God King of England, Lord of Ireland, and Duke of Guyan, to all those these present Letters shall hear or see, Greeting. Know ye, that we to the Honor of God, and of Holy Church, and to the Profit of our Realm, have Granted for us and our Heirs, that the Charter of *Liberties*, and the Charter of the Forest; which were made by common Assent of all the Realm, in the Time of King *Henry* our Father, shall be kept in every point without Breach. And we will, that the same Charter shall be sent under our Seal, as well to our Justices of the Forreft, as to others, and to all Sheriffs of Shires, and to all our other Officers, and to all our Cities throughout the Realm, together with our Writs, in the which it shall be contained, that they cause the aforefaid Charters to be published, and to declare to the People that we have Confirmed them in all Points. And that our Justicers, Sheriffs, Mayors, and other Ministers which under us have the *Laws* of our Land to guide, shall allow the same Charters pleaded before them in Judgment in all their Points, that is, to wit, the great Charter

Charter as the common Law, and the Charter of the Forest, for the Wealth of our Realm.

Cap. 2. And we will, that if any Judgment be given from henceforth contrary to the Points of the Charters aforesaid by the Justicers, or by any other our Ministers at hold plea before them, against the Points of the Charters, it shall be undone and holden for nought.

Cap. 3. And we will that the same Charters shall be put under our Seal, to Cathedral Churches throughout our Realm, there to remain, and shall be read before the People two times by the Year.

Cap. 4. And that all Archbishops and Bishops shall pronounce the Sentence of Excommunication against all those that by Word, Deed or Council, do contrary to the aforesaid Charters, or that in any Point break or undo them. And that the said Curses, be twice a Year pronounced and published by the Prelates aforesaid. And the same Prelates or any of them, be remiss in the Denunciation of the said Sentences, the Archbishop of Canterbury, and York for the time being, shall compel and train them to the Execution of their Duties in Form aforesaid.

Cap. 5. And for so much as divers People of our Realm be in fear, that the Aids and Tasks which they have given to us before time towards our Wars, and other necessities of their own Grant, or good Will (however they were made) might turn to a Bondage to them and their Heirs, because they might be at an other time found in the Rolls, and likewise for the Prizes taken throughout the Realm by our Ministers: We have granted for us and our Heirs, that we shall not draw nor sell our Aids, Tasks nor Prizes into a Custom, for any that hath been done heretofore, be it by Roll, or any other precedent that may be founden.

Cap. 6. Moreover, we have granted for us and our Heirs, as well to Archbishops, Bishops, Abbots, Priors, and other folk of holy Church, as also to Earls, Barons, and to all the Commonalty of the Land, that for no business

finess from henceforth, we shall take such manner of Aids, Tasks or Prices, but by the common Assent of the Realm, and for the common Profit thereof; saving the ancient Aids and Prices due and accustomed.

Cap. 7. And for so much, as the more Part of the Commonalty of the Realm find themselves sore grieved with the Meletot of Woolls, that is to wit, a Toll of forty Shillings for every Sack of Wooll, and have made Petition to us for to Relase the same: We at their Request have clearly Released it, and have granted for us and our Heirs, that we shall not take such things without their common consent and good will, saving to us and our Heirs the Custom of Woolls, Skins and Leather, granted before by the Commonalty aforesaid. In Witness of which things we have caused our Letters to be Patent. Witness Edward our Son, at London, the 10th of October, and the Twenty Five Year of our Reign.

*Sententia lata super Chartas.*

The Sentence of the Clergy against the Breakers  
of the Articles above written.

**I**N the Name of the Father, the Son, and the Holy Ghost, Amen. Whereas our Sovereign Lord the King, to the Honour of God, and of holy Church, and for the common Profit of the Realm, hath granted for him and his Heirs forever, these Articles above written; Robert Archbishop of Canterbury, Primate of all England, admonished all his Province, once, twice and thrice: because that shornness will not suffer so much delay, as to give knowledge to all the People of England of these presents in writing. We therefore enjoyn all Persons of what Estate soever they be, that they and every of them, as much as in them is, shall uphold and maintain these Articles granted by our Sovereign Lord the King in all Points. And all those that in any point do resist or break, or in any manner hereafter procure, Counsel, or any ways assent to resist or break those Ordinances, or go about it, by word or deed, openly or privily, by any manner of



of Pretence or Colour: We the foresaid Archbishop by our Authority in this writing expressed, do Excommunicate and Accurse, and from the Body of our Lord Jesus Christ, and from all the Company of Heaven, and from all the Sacraments of holy Church do Sequester and Exclude.

NOTES.

It may be observed, that this Curse is left out of our late Printed Statute-Book, though inserted at large in that printed in three Volumes, in Queen Elizabeth's days, An. 1557. There is likewise another like dreadful, but more full and express Curse solemnly pronounced before in the time of King Henry 3d. which being also omitted in our Modern Statute-Book, I shall add here for the Readers satisfaction.

The Sentence or Curse given by the Bishops against the Breakers of the Great Charter.

IN the Year of our Lord, One thousand two hundred and fifty three, the Third day of May, in the great Hall of the King at Westminster, in the Presence and by the Assent of the Lord Henry, by the Grace of God, King of England, and the Lord Richard Earl of Cornwall his Brother, Roger Bigot Earl of Norfolk and Suffolk, Marshal of England, Humphry Earl of Hereford, Henry Earl of Oxford, John Earl of Warren, and other Estates of the Realm of England; William Boniface by the mercy of God Archbishop of Canterbury, Primate of all England; F. of London, H. of Ely, S. of Worcester, E. of Lincoln, W. of Norwich. G. of Hereford, W. of Salisbury, W. of Durham, R. of Exeter, M. of Carlile, W. of Bath, E. of Rochester, T. of St. Davids; Bishops apparelled in pontificals with Tapers burning, against the Breakers of the Churches Liberties and of the Liberties or other Customs of the Realm of England, and namely of these which are contained in the Charter of the common Liberties of England, and Charter of the Forrest.

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have

have denounced the Sentence of Excommunication in this Form. By the Authority of Almighty God, the Father, the Son, and the Holy Ghost, and of the glorious Mother of God, and perpetual Virgin Mary, of the blessed Apostles Peter and Paul, and of all Apostles, and of all Martyrs, of blessed Edward King of England, and of all the Saints of Heaven: We Excommunicate, Accurse, and from the Benefits of our holy Mother the Church we Sequester: all those that hereafter willingly and maliciously deprive or spoil the Church of her Rights: And all those that by any Craft or Wiliness do Violate, Break, Diminish, or change the Churches Liberties, and free Customs contained in the Charters of the common Liberties, and of the Forrest, granted by our Lord the King, to Archbishops, Bishops and other Prelates of England, and likewise to the Earls, Barons, Knights, and other Freeholders of the Realm: And all that secretly or openly, by Deed, Word or Council, do make Statutes, or observe them being made, and that bring in Customs, or keep them when they be brought in, against the said Liberties, or any of them, the Writers, the Law-makers, Councillors, and the Executioners of them, and all those that shall presume to judge against them. All and every which Persons before mentioned, that willingly shall commit any of the Premises, let them well know, that they incur the foresaid Sentence ipso facto, [i. e. upon the Deed done.] And those that commit ought ignorantly, and be admonished, except they reform themselves within 15-days after the time of the Admonition, and make full satisfaction for that they have done, at the will of the Ordinary, shall be from that time forth wrapped in the said Sentence; and with the same Sentence we burden all those that presume to disturb the Peace of our Sovereign Lord the King, and of the Realm. To the perpetual Memory of which things, we the foresaid Prelates have put our Seals to the presents.

So zealous were our Ancestors to preserve their Liberties from encroachments, that they employed all the Strength of human Policy and Religious Obligations to secure them intire and inviolate. And since this Act is still in as much force as the Act against Conventicles, I cannot

cannot fathom the Reason why our Prelates should not as well hold themselves obliged twice a Year to accurse the Infringers thereof, as to prosecute Protestant Dissenters: However we may note, that by this Statute, Chap. 2. it is expressly provided, that if any Judgments be given from that time forwards against any of the Points of *Magna Charta*, they shall be annull'd and holden for nought; therefore *Quære*, whether the Conviction of Protestant Dissenters by a Justice, and spoiling them of their goods without any Tryal and Conviction by a Jury (which is expressly against the 29th Chapter of *Magna Charta*) ought not to be taken notice of, and redress'd, and the Original Promoters thereof to be curs'd by my Lords the Bishops as aforesaid.

*A Statute made Anno 34th Edw. I. commonly called de Tallageo non Concedendo.*

C H A P. I.

*The King or his Heirs shall have no Tallage or Aid without consent of Parliament.*

**N**O Tallage or Aid shall be taken or levied by us or our Heirs in our Realm, without the good Will and Assent of Archbishops, Bishops, Barls, Barons, Knights, Burgesses, and other Freemen of the Land.

C H A P. II.

*Nothing shall be purveyed to the King's use without the Owners consent.*

**N**O Officer of ours, or of our Heirs, shall take Corn, Leather, Cattel, or any other Goods of any manner of Person, without the good Will and Assent of the Party to whom the Goods belonged.

## English Liberties.

## C H A P. III.

*Nothing shall be taken of Sacks of Wooll by Colour of Maletot.*

**N**Othing from henceforth shall be taken of Sacks of Wooll by Colour or occasion of Maletot.

## C H A P. IV.

*All Laws, Liberties and Customs, confirmed.*

**W**E will and Grant for us and our Heirs, That all Clerks and Lay-men of our Land, shall have their Laws, Liberties, and free Customs, as largely and wholly, as they have used to have the same at any time when they had them best. (2.) And if any Statutes have been made by us and our Ancestors, or any Customs brought in contrary to them, or any manner of Article contained in this present Charter: We will and grant that such manner of Statutes and Customs shall be void and frustrate for evermore.

## C H A P. V.

*Pardon granted to certain Offenders.*

**M**oreover we have pardoned *Rumphrey Bohun*, Earl of Hereford, and *Essex*, Constable of England, *Roger* Earl of Norfolk and Suffolk, Marshal of England, and other Earls, Barons, Knights, Esquires, and namely, *John de Ferraris*, with all other being of their Fellowship, Confederacy, and Bond, and also of other that hold 20. . Land in our Realm, whether they hold of us in in chief or of others, that were appointed at a day certain to pass over with us into *Flanders*, the Rancour and evil Will born against us, and all other Offences if any they have committed against us, unto the making of this present Charter.

## C H A P. VI.

*The Curse of the Church shall be Pronounced against the Breakers of this Charter.*

**A**ND for the more assurance of this thing, we will and grant that all Archbishops and Bishops for ever, shall read this present Charter in Cathedral Churches twice in the Year, and upon the Reading thereof

thereof in every of their Parish-Churches shall openly denounce accursed all those that willingly do procure to be done any thing contrary to the Tenor, force and effect of this present *Charter*, in any Point and Article. In witness of which thing we have set our Seal to this present *Charter*, together with the Seals of the Archbishops, Bishops, which voluntarily have sworn, that as much as in them is, they shall observe the Tenour of this present Charter in all Causes and Articles, and shall extend their faithful aid to the keeping thereof, &c.

*The Comment.*

**T**HE word Tallage is derived from the *French* word *Tailler*, to share or cut out a Part, and is Metaphorically used for any Charge, when the King or any other does cut out or take away any part or share out of a Man's Estate, and being a general Word, it includes all Subsidies, Taxes, Tenths, Aids, Impositions or other Charges whatsoever.

The Word *Malecot* signifies an Evil (that is, an unjust) Toll, Custom, Imposition or Sum of Money.

The occasion of making this Statute was this: King *Edward* being injured by the *French* King, resolves to make War against him, and in order thereunto requires of *Humphrey le Bohun* Earl of *Hereford* and *Essex*, and Constable of *England*, and of *Roger Bigot* Earl of *Norfolk* and *Suffolk*, and Marshal of *England*, and of all the *Earls*, *Barons*, *Knights*, *Esquires*, and *Freeholders* of 20. *l.* Land, whether they held of him in *Capite*, to contribute towards such his expedition, that is. to go in Person or find sufficient Men in their places in his Army; which the Constable and Marshal, and many of the *Knights* and *Esquires*, and especially this *John Ferrars* taking part with them and all the *Freemen*, stoutly denied, unless it were so ordained and determined by common consent in Parliament according to Law. And it seems the

contest grew so hot, that Baker's Chronicle, Folio 99. relates a strange Dialogue that passed between them, viz. That when the Earl Marshal told the King, That if his Majesty pleased to go in Person, he would then go with him, and march before him in the Van-Guard, as by right of Inheritance he ought to do; but otherwise he would not stir; the King told him plainly, he should go with any other, tho he went not in Person. I am not so bound (saith the Earl) neither will I take that Journey without you; The King swore, By God, Sir Earl, you shall either go or Hang: And I swear by the same Oath (saith the Earl) I will neither go nor Hang. And so the King was forc't to dispatch his expedition without them. And yet (saith my Lord Coke) although the King had conceived a deep displeasure against the Constable, Marshal, and others of the Nobility, Gentry and Commons of the Realm, for denying that which he so much desired, yet, for that they stood in defence of their Laws, Liberties, and free Customs, the said King Edward the First, who (as Sir William Herle Chief Justice of the Common-Pleas, who lived in his time and served him, said in the time of King Edward the 3d.) was the wisest King that ever was; did after his return from beyond the Seas, not only consent to this Statute, whereby all such Tallages and Impositions are forbidden for the future, but also passes a Pardon to the said Nobles, &c. of all Rancour, Ill-will and Transgressions, If any they have committed; which last words were added, lest by acceptance of a Pardon of Transgression, they should implicitly confess that they had Transgressed; so careful were the Lords and Commons in former times to preserve the Ancient Laws, Liberties, and free Customs of their Country.

But note, these words *Si quas fecerint, If any they have committed,* are left out in all the Printed Books of Statutes; but they are in this Statute recited by Coke, in his Second Book of Institutes, Folio. 535. and specially noted, which he would never have done, if it had not been so in the Rolls. And since 'tis probable there may be



#36 The following Verses are attributed to Hugh  
Bagot earl of Norfolk in the time of King  
Henry II. - No doubt Roger was a descendant  
of this Hugh and seems to have inherited his  
disposition

" Was I in my Castle at Bungay

" Fast by the river Wareney

" I would not care for the King of Lockney.  
(i.e. the King of London.)

These Earls of Norfolk seem a diff<sup>r</sup> family  
from the present Dukes who are descended  
from Edward I<sup>st</sup> see Lockney, Eng. Brit

Query - Can the term Bigot have  
arisen from this dialogue



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be many more like Omissions, Mistakes or Falsifications, crept into the Prints, and for that the Record and not printed Statute-Book (varying from the Records) is the Law, it were to be wished that all the *Rolls of Acts of Parliament* were carefully by some Persons of Learning and Integrity, view'd and compared with the Prints, and notice taken of all such *Variations*, and of *Errors* committed in the Translations, and of any Statutes of a Public Import, if in force, that were never printed, and the same to be made Public.

Anno 25 Edw. 3.

C H A P. II.

*A Declaration what Offences shall be adjudged Treason.*

WHereas diverse opinions have been before this time in what Case Treason shall be said, and in what not, (2) The King at the Request of the Lords and of the Commons, hath made a Declaration in the manner as hereafter followeth, that is to say, when a Man doth Compass or Imagin the Death of our Lord the King, or of our Lady his Queen, or of their Eldest Son and Heir. (3.) Or if a Man do violate the King's Companion, or the King's Eldest Daughter unmarried, or the Wife of the King's Eldest Son and Heir. (4.) Or if a Man do Levy War against our Lord the King in his Realm, or be Adherent to the King's Enemies in his Realm, giving them Aid and Comfort in the Realm, or elsewhere, and thereof be provably Attainted of open Deed by the People of their condition. (5.) And if a Man Counterfeit the King's Great or Privy-Seal, or his Money. (6.) And if a Man bring false Money into this Realm, Counterfeit to the Money of England, as the Money called *Lusburgh*, or other like to the said Money of England, knowing the Money to be false, to Merchandize, or make payment, in

deceit.

deceit of our said *Lord the King*, and of his People. (7.) And if a Man slay the Chancellor, Treasurer, or the King's Justice of the one Bench or the other, Justices in *Eyre*, or Justices of Assize, and all other Justices Assigned to hear and determine, being in their Places, doing their Offices. (8.) And it is to be understood, that in the Cases above rehearsed that ought to be judged Treason, which extends to our Lord the King, and of his Royal Majesty. (9.) And of such Treason the Forfeiture of the Escheats pertaineth to our Lord, as well of the Lands and Tenements holden of other, as of himself. (10.) And moreover, there is another manner of Treason, that is to say, when a Servant slayeth his Master, or a Wife her Husband, or when a Man, Secular or Religious, slayeth his Prelate, to whom he oweth Faith and Obedience. (11.) And of such Treason the Escheats ought to pertain to every Lord of his own Fee. (12.) And because that many other like Cases of Treason may happen in time to come, which a Man cannot think nor declare at this present time; it is accorded, That if any other Case, supposed Treason, which is not above specified, doth happen before any Justices, the Justices shall tarry without any going to Judgment of the Treason, till the Cause be shewed and declared before the King and his Parliament, whether it ought to be judged Treason or other Felony. (13.) And if percase any Man of this Realm, ride armed covertly or seret with Men of Arms against any other to slay him, or rob him, or take him, or retain him till he hath made Fine and Ransom for to have his deliverance, it is not the Mind of the King nor his Council, that in such case it shall be judged Treason, but shall be judged Felony or Trespas, according as the Laws of the Land of old time used, and according as the Case requireth. (14.) And if in such Case or other like, before this time any Justices have judged Treason, and for this cause the Lands and Tenements have come into the King's hands as forfeit, the chief Lords of the Fee shall have the Escheats of the Tenements holden of them, whether that the same Tenements

nements be in the King's hands, or in others, by Gift or in other manner. (15.) Saving always to our Lord the King the Year and the Waste, and the Forfeitures of Chattels, which pertain to him in the Cases above named. (16.) And that the Writs *Scire Facias* be granted in such Case against the Land-Tenants, without other Original, and without allowing any Protection in the said Suit. (17.) And that of the Lands which be in the King's hands, Writs be granted to the Sheriffs of the Counties where the Lands be, to deliver them out of the King's hands without delay.

*The Comment.*

**T**Reason is derived from *Trahir*, which signifies Treacherously to betray; when it concerns the Government and the Public, 'tis called *High-Treason*, but against particular Persons as, a Wife killing her Husband, a Servant his Master, &c. it is *Petty-Treason*.

High-Treason in the Civil-Law is called *Crimen Lesæ Majestatis*, a Crime wronging Majesty, but in our Common-Law-Latine, *Alta Proditio*; and in an Indictment for this Offence the Word *Proditorie* must be in.

Before the making this Act, so many things were charged as *High-Treason*, that no Man knew how to behave himself: Now by this Statute, the Particulars of that grand Crime are reckoned up, and all others excluded, till declared by Parliament. And the settling of this Affair was esteemed of such Importance to the Public-Weal, that the Parliament wherein this Act passed, was called long after, *Benedictum Parliamentum*, the *blessed Parliament*.

The Substance of this Statute is branched out by my Lord Cook 3d. part of *Insti.*, Fol. 3. into six Heads *viz.*

The first concerning Death, by compassing or imagining the Death of the King, Queen or Prince, and declaring

declaring the same by some *Overt Deed*. By Killing and Murthering of the Chancellor, Treasurer, Justices of either Bench, Justices in *Eyre*, Justices of Assize, Justices of *Oier* and *Terminer*, in their Places doing their Offices.

The second is to Violate, that is, to carnally know the Queen, the King's Eldest Daughter unmarried, the Prince's Wife.

The third is; *Levying War* against the King.

The fourth is, adhering to the King's Enemies, within the Realm or without, and declaring the same by some overt Act.

The fifth is, Counterfeiting of the Great, the Privy-Seal, or the King's Coyn.

The sixth and last, by bringing into this Realm Counterfeit Money to the likeness of the King's Coyn.

Now as to the particular Exposition of the several Parts of this Statute.

1. *When a Man* doth compass, &c. in the Original it is *Quant Homo*, which extends to both Sexes, but one that is *Non Compos Mentis*, or an Infant within the Age of discretion, is not included; but all *Aliens* within the Realm of England, being thereby under the King's Protection, and owing a local Allegiance, if they commit Treason may be punished by this Act, but otherwise it is of an *Enemy*.

2. *To compass and imagine*, is to contrive, design or intend the Death of the King; but this must be declared by some Overt Act. But declaring by an open Act a Design to *depose* or *Imprison* the King, is an Overt Act to manifest the compassing his Death. For they that will depose their King, will not stick to Murther him, rather than fail of their end, and (as King Charles the first Excellently observed, and lamentably experienced) There are commonly but few steps, between Prisons and the Graves of Princes.

3. By the Word *King*, is intended, 1. A King before his Coronation, as soon as ever the Crown descends upon



upon him, for the Coronation is but a Ceremony. 2. A King de Facto, and not de Jure, is a King within this Act, and a Treason against him is punishable, though the right Heir get the Crown. 3. A Titular King, as the Husband of the Queen, is not a King within this Act, but the Queen is, for the word King here includes both Sexes.

4. What is to be understood by *the King's Eldest Son and Heir within this Act*? I answer, 1. A second Son after the Death of the first Born, is within the Act, for he is then Eldest. Secondly, The Eldest Son of a Queen Regnant is as well within the Statute, as of a King. Thirdly, The Collateral Heir Apparent or Presumptive is not within this Statute. Roger Mortimer Earl of March was in *Anno Dom. 1487.* (11 *Rich. 2.*) proclaimed Heir Apparent. *Anno 39. Hen. 6.* Richard Duke of York was likewise Proclaimed Heir Apparent, and so was John de la Poolen, Earl of Lincoln, by *Rich. 3.* And Henry Marquess of Exeter, by King Henry the 8th. But none of these or the like are within the Purview of his Statute, saith my Lord Coke, 2 *Instit.* Folio 9.

5. Note, whereas in the Printed Statute-Books, it is there said *probably Attainted*, the same is a great Error: for the Words of the Record are *Et de cco PROVABLEMENT Soit Attaint: And shall be thereof PROBABLY Attaint:* and I cannot but admire that such a gross mistake should be suffered, since my Lord Coke has so expressly observed the difference, in these words following, 3 *Instit.* fol. 12. *In this Branch* (says he) *four things are to be observed.* 1. *This word [Provablement] provably, that is, upon direct and manifest proof, not upon Conjectural presumptions or Inferences, or strains of wit, but upon good and sufficient proof.* - *And herein the Adverb [Provablement] Provably, hath a great Force, and signifyeth a direct and plain proof, which word the King, the Lords, and Commons in Parliament did use, for that the Offence was heinous, and was so heavily and severely punished, as none other the like, and therefore the Offender must Provably be*

*Attainted.*

Attainted, which words are as forcible, as upon direct and manifest proof. Note, the Word is, not [Probably] for then Commune Argumentum might have served; but the Word is [Provably] be Attainted. Secondly, This word [Attaint] necessarily implyeth that he be proceeded with, and Attainted according to the due Course and proceedings of Law, and not by Absolute Power, or by other means, as in former times had been used. And therefore if a Man doth adhere to the Enemies of the King, or be slain in open War against the King, or otherwise dye before the Attainder of Treason, he forfeiteth nothing, because (as this Act saith) he is not Attainted: wherein this Act hath altered that, which before this Act, in Case of Treason was taken for Law; and the Statute of 34 E. 3. Chap. 12. saves nothing to the King, but that which was in Esse, and pertaining to the King at the making of that Act. And this appeareth by a Judgment in Parliament in Ann. 29. H. 6. Cap. 1. That Jack Cade being slain in open Rebellion could no way be punished, or forfeit any thing, and therefore was Attainted by that Act of High-Treason. Thirdly, Of open Deed, per Apertum Factum, these words strengthen the former Exposition of [Provablyment,] an Overt Act must be alledged in every Indictment upon this Act, and proved. Compassing by bare words is not an Overt Act, as appears by many Temporary Statutes against it. But there must be some open Act which must be manifestly proved. As if divers do Conspire the Death of the King, and the manner how, and thereupon provide Weapons, Powder, Poison, Harness, send Letters, or the like, for the Execution of the Conspiracy. If a Man be Arraigned upon an Indictment of High-Treason, and stand Mute [that is, refuse to Plead] he is not to be pressed to death, but shall have the same Judgment, and incur such forfeiture, as if he had been Convicted by Verdict, or had confessed it. For this standeth well with this word [Provablyment] for *fatetur facinus quod iudicium fugit*. But otherwise it is in case of Petit Treason, Murtherer, or other Felony. If a Subject Conspire with a Foreign Prince to Invade the Realm.

Realm by open Hostility, and prepare for the same by some *Overt Act*, this is a sufficient *Overt Act* for the Death of the King. Fourthly, The Composition and Connection of the Words are to be observed, *viz.* [*Thereof be attained by open deed*] This (as was resolved by the Justices in *Easter Term*, 35 of *Eliz.*) relateth to the several and distinct Treasons before expressed (and specially to the *Compassing and Imagination of the Death of the King*, &c. for that is a Secret in the Heart) and therefore one of them cannot be an *Overt Act* for another, as for example: a Conspiracy is had to Levy War, this (as hath been said and so resolved) is no Treason by this *Act*, until it be levied, therefore it is no *Overt Act*, or manifest proof of the Compassing the Death of the King within this *Act*; for the Words are [*deseo, &c. thereof*], that is of the Compassing of the Death. Divers latter Acts of Parliament have ordained, That compassing by bare Words or Sayings, should be Treason, but are all either repealed or expired (*except only that of the 12 Car. 2. herein after recited, which is only to be in force during the Life of his present Majesty, whom God preserve*: And it was wont to be said, bare Words may make an Heretick, but not a Traytor, without an *Overt Act*. And the Wisdom of the Makers of this Law would not make Words only to be Treason, seeing such variance commonly among the Witnesses is about the same, as few of them agree together. But if Words be set down in Writing by the Delinquent himself, that is a sufficient *Overt Act* within this Statute.

In the Preamble of the Statute of 1 *Mar.* (concerning the Repeal of certain Treasons declared after this Statute of the 25. of *Edw. 3.* and before that time, and bringing back all things to the Measures of this Statute.) It is agreed by the whole Parliament, *That Laws justly made for the Preservation of the Commonwealth, without extream punishment, are more often obeyed and kept than Laws and Statutes made with great and extream Punishments. And in special such Laws and Statutes so made, whereby not only the ignorant*  
and

*and rude unlearned People, but also learned and expert People minding honesty, are oftentimes trapped and snared, yea many times for Words only, without other Fact or Deed done or perpetrated.* Therefore, this Act of 25 Edw. 3. doth provide that there must be an Overt Act. But words without any Overt Act, are to be punished in another degree. as an high Misprision.

[*By People of their condition*] That is, *per pares*, by their Equals.

7. As to Treason, *by Levying War against the King*, we must note, that though Conspiring or Compassing to Levy War, without a *War de Facto*, be no Treason, yet if many conspire a War, and only some few actually Levy it, all are guilty of the Treason. Raising a Force to burn or throw down a particular Inclosure, is only a *Riot*, but if it had been to have gone from Town to Town to throw down all Inclosures, or to change Religion, or the like, it were levying of War, because the intended Mischief is Publick. Holding a Fort or Castle against the King's Forces, is levying of War.

8. As touching the *Interpretative Treasons by killing the Chancellor, Treasurer, Justice of one of the oiber Bench, Justice in Eyre, or of Assize, or Oyer and Terminer.* Note, 1. This extends but only to the Persons here named, not to the Lord Steward, Constable, or Marshal, or Lords of Parliament. Secondly, It extends to those only during their Office. Thirdly, It extends only to killing, not wounding without Death.

But by the Stat. 3 H 7. C. 14. Compassing to kill the King or any of his Council, is made Felony.

9. Counterfeiting the *Great, or Privy Seal* is Treason; but it must be an *Actual* Counterfeiting thereof, *Compassing* to do it is no Treason: affixing the Great Seal by the Chancellor without Warrant, is no Treason: Fixing a new Great Seal to another Patent, is a great *Misprision*, but no Treason, being not a Counterfeiting within this Act: But Aiders and Consenters are within this Act. The Counterfeiting of the Privy Signet or Sign Manual,

is no Treason within this Act, but made by the Statute, 1 Mar. c. 6.

10. Treason concerning *Coin*, is either *Counterfeiting* the King's *Coin*, and this was Treason at common Law, and Judgment only as of Petit Treason, but Clipping, &c. being made Treason by subsequent Statutes, the Judgment is to be Drawn, Hang'd and Quarter'd. Money here extends only to the proper Money of this Realm. But now by the 1 M. c. 6. Forging or Counterfeiting Money made current by Proclamation, is High Treason, and by 14 Eliz. c. 3. Forging of Foreign Coin, not current here is Misprision of Treason in the Forgers, their Aiders and Abettors — And not that the bare Forging of the King's Coin, without uttering, is Treason.

The second Offence concerning Money, here declared to be Treason, is, If any Person bring into this Realm Counterfeit Money: Where note. 1. It must be Counterfeit: 2. Counterfeited to the Similitude of English Money: 3. It must be brought from a Foreign Realm, and therefore not from Ireland: 4. It must be brought knowingly: 5. Brought, and not barely uttered here. But by the Statute *De Moneta*, if false or clipt Money be found in a Persons hands, and he be suspicious, he may be Arrested till he can clear himself: 6. He must merchandize therewith, that is make payment thereof.

11. As this Statute leaves all other doubtful Matters to be declared Treason in Parliament, but not to be punish'd as such till so declared. So in succeeding Kings Reigns abundance of other matters were declared Treason, which being found very grievous and dangerous, by the Statute of 1 Mar. Cap. 1. it is enacted, That thenceforth no Act, Deed, or Offence, being by Act of Parliament, or Statute, made Treason, Petty Treason, or Misprision of Treason, by Words, Writing, Cyphering, Deeds, or otherwise however, shall be taken, had, deemed or adjudged to be High Treason, Petty Treason, or Misprision of Treason, but only such as be declared and expressed to be Treason, Petty Treason, or Misprision of Treason, by this Statute of 1 Mar. 25 Edw. 3.

12. The Offences made High Treason by Statutes since this first of Mary, are as follow.

Refusing the Oath of Supremacy upon second Tender, is Treason by 5 Eliz. Cap. 1. but no Corruption of Blood, so likewise is extolling the Power of the Bishop of Rome, a Premunire, and the bringing in of Bulls, or putting them in Execution, or Reconciling to the Church of Rome, is Treason by the same Statute. Bringing in *Agnus Dei's* is a Premunire. 23 Eliz. C. 1. Also absolving Subjects from their Obedience, or reconciling them to the Obedience of Rome is Treason, 27 Eliz. Cap. 2. So is it likewise for a Priest coming into England, not submitting in two days. The like for English Men in Foreign Seminaries.

But besides these *Old Treasons*, since the happy Restauration of his Majesty, The zealous Regards his Subjects in Parliament had for the Safety of his Sacred Person and Government, thought fit to prefer and make the Statute following.

Anno Regni Car. 2. Regis, decimo tertio.

## C A P. I.

An Act for Safety and Preservation of his Majesty's Person and Government, against Treasonable and Seditious Practices and Attempts.

**T**HE Lords and Commons Assembled in Parliament, deeply Weighing and Considering the Miseries and Calamities, of well nigh twenty Years, before your Majesty's Happy Return, and withall Reflecting on the Causes and Occasions of so great and deplorable Confusions, do in all Humility and Thankfulness, acknowledge your Majesty's incomparable Grace and Goodness to your People, in your Free and General Pardon, Indemnity and Oblivion, by which your Majesty



Majesty hath been pleased to deliver your Subjects, not only from the Punishment, but also from the Reproach, of their former Miscarriages, which unexampled Piety and Clemency of your Majesty hath enflamed the Hearts of us your Subjects with an ardent desire to express all possible Zeal and Duty in the Care and Preservation of your Majesty's Person (in whose Honour and Happiness consists the Good and Welfare of your People) and in preventing (as much as may be) all Treasonable and Seditious Practices and Attempts for the time to come. (2.) And because the Growth and Increase of the late Troubles and Disorders, did in a very great measure proceed from a multitude of Seditious Sermons, Pamphlets and Speeches, daily Preached, Printed and Published with a transcendent Boldness, defaming the Person and Government of your Majesty and your Royal Father, wherein Men were too much encouraged, and (above all) from a wilful Mistake of the supreme and lawful Authority, whilst Men were forward to cry up and maintain those Orders and Ordinances Oaths and Covenants, to be Acts Legal and Warrantable, which in themselves had not the least Colour of Law or Justice to support them, from which kind of Dissemblers, as the present Age is not wholly freed, so Posterity may be apt to Relapse into them, if a timely Remedy be not provided. (3.) We therefore the Lords and Commons in Parliament Assembled, having duly considered the Premises, and remembering that in the thirteenth Year of the Reign of Queen Elizabeth of ever blessed-Memory, a right good and profitable Law was made, for preservation of her Majesties Person, do most humbly beseech your most Excellent Majesty, that it may be enacted. (4.) And be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords and Commons in this present Parliament Assembled, and by Authority of the same, That if any Person or Persons what-soever, after the four and twentieth day of June, in the Year of our Lord one thousand six hundred sixty and one, during the natural life of our most gracious Sovereign Lord the King (whom God Almighty preserve and

bless,

bleſs, with a long and prosperous Reign) ſhall within the Realm or without, compaſs, imagine, invent, deviſe or intend Death or Deſtruction, or any bodily Harm, tending to the Death or Deſtruction, Maim, or Wounding, Imprisonment or Reſtraint of the Perſon of the ſame our Sovereign Lord the King. (5.) Or to deprive or depoſe him from the Stile, Honour or Kingly Name of the Imperial Crown of this Realm, or of any other his Maſteſties Dominions or Countries. (6.) To Levy War againſt his Maſteſty within this Realm or without. (7.) Or to move or ſtir any Foreigner, and Strangers with force to invade this Realm, or any other his Maſteſty's Dominions or Countries, being under his Maſteſties Obeſſance. (8.) And ſuch Compaſſings, Imaginations, Inventions, Devices or Intentions, or any of them, ſhall expreſs, utter or declare by any Printing, Writing, Preaching, or malicious and adviſed Speaking, being lawfully convicted thereof, upon the Oaths of two lawful and credible Witneſſes, upon Tryal, or otherwiſe convicted or attainted by due Courſe of Law, then every ſuch Perſon or Perſons ſo as aforeſaid offending ſhall be deemed, declared and adjudged to be Traytors, and ſhall ſuffer pains of Death and alſo loſe and forfeit as in Caſes of High Treason.

2. And be it further enacted by the Authority aforeſaid, That if any Perſon or Perſons at any time after the four and twentieth day of June, in the Year of our Lord, one thouſand ſix hundred ſixty and one, during his Maſteſty's life, ſhall maliciously and adviſedly publiſh or affirm the King to be an Heretick or Papiſt, or that he endeavours to introduce Popery. (2.) Or ſhall maliciously and adviſedly by Printing, Writing, Preaching, or other Speaking, expreſs, publiſh, utter or declare any Words, Sentences, or other thing or things to incite or ſtir up the People to hatred or diſlike of the Perſon of his Maſteſty, or the eſtabliſhed Government. (3.) Then every ſuch Perſon and Perſons, being thereof legally convicted, ſhall be diſabled to have or enjoy, and it hereby diſabled, and made incapable of having

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ving, holding, enjoying, or exercising any Place, Office, or Promotion Ecclesiastical, Civil or Military, or any other Employment in Church and State, other than that of his Peerage, and shall likewise, be liable to such further and other Punishments, as by the common Laws, or Statutes of this Realm, may be inflicted in such Cases.

(4.) And to the end that no Man hereafter may be misled into any seditious or unquiet Demeanor, out of an opinion that the Parliament begun and held at Westminster, upon the third Day of November, in the Year of Lord, 1640. is yet in being, which is undoubtedly Dissolved and Determined; and so is hereby declared and adjudged to be fully dissolved and determined. (5.) Or out of an opinion that there lies any Obligation upon him from any Oath, Covenant or Engagement whatsoever, to endeavour a Change of Government, either in Church or State. (6.) Or out of an Opinion, that both Houses of Parliament, or either of them, have a Legislative Power without the King. (7.) All which Assertions have been seditiously maintained in some Pamphlets lately Printed, and are daily promoted by the active Enemies of our Peace and Happiness.

3. Be it therefore further enacted by the Authority aforesaid, That if any Person or Persons at any time after the 24th day of June, in the Year of our Lord, 1661. shall maliciously and advisedly, by Writing, Printing, Preaching, or other Speaking, Express, Publish, Utter, Declare, or Affirm, That the Parliament begun at Westminster upon the third Day of November, in the Year of Lord, 1640. is not yet Dissolved, or is not Determined, or that it ought to be in being, or hath yet any Continuance or Existence. (2.) Or that there lies any Obligation on him, or any other Person from any Oath, Covenant or Engagement whatsoever, to endeavour a Change of Government, either in Church or State. (3.) Or that both Houses of Parliament, or either House of Parliament have or hath a Legislative Power without the King, or any other words to the same effect. (4.) That then every such Person and Persons so as aforesaid offending shall incur the danger and penalty of a Premunire mentioned in a Statute made

in the sixteenth Year of the Reign of King Richard the Second. (5.) And it is hereby also declared, That the Oath usually called the Solemn League and Covenant, was in it self an unlawful Oath, and imposed upon the Subjects of this Realm, against the Fundamental Laws and Liberties of this Kingdom. (6.) And that all Orders and Ordinances, or pretended Order and Ordinances of both or either Houses of Parliament, for imposing of Oaths, Covenants and Engagements, levying of Taxes, or raising of Forces and Arms, to which the Royal Assent, either in Person or by Commission, was not expressly had or given, were in the first creation and making, and still are, and so shall be taken to be Null and Void to all intents and purposes whatsoever. (7.) Provided nevertheless, That all and every Person and Persons, Bodies politick and corporate, who have been, or shall at any time hereafter be questioned for anything acted or done by colour of any the Orders or Ordinances herein before mentioned and declared to be null and void, and are indemnified by an Act, Intituled, An Act of Free and General Pardon, Indemnity and Oblivion, made in the twelfth Year of his Majesty's Reign that now is, or shall be indemnified by any Act of Parliament, shall and may make such use of the said Orders and Ordinances for their Indemnity according to the true intent and meaning of the said Act, and no other, as he or they might have done, if this Act had not been made; any thing in this Act contained notwithstanding.

4. Provided always, That no Person be prosecuted for any of the Offences in this Act mentioned (other than such as are made and declared to be High Treason) unless it be by order of the Kings Majesty, his Heirs and Successors, under his or their Sign Manual, or by order of the Council Table of his Majesty, his Heirs or Successors, directed unto the Attorney General for the time being or some other of the Council learned to his Majesty, His Heirs or Successors, for the time being. (2.) Nor shall any Person or Persons by virtue of this present Act incur any the Penalties herein before mentioned, unless he or they be prosecuted within six Months next after the Offense committed, and Indicted there-

thereupon within three Months after such Prosecution ; any thing herein contained to the contrary notwithstanding.

5. Provided always, and be it enacted, That no Person or Persons shall be Indicted, Arraigned, Condemned, Convicted or Attainted for any of the Treasons or Offences aforesaid, unless the same Offender or Offenders be thereof Accused by the Testimony and Deposition of two lawful and credible Witnesses upon Oath. (2.) Which Witnesses at the time of the said Offender or Offenders Arraignment, shall be brought in Person before him or them face to face, and shall openly avow and maintain upon Oath : what they have to say against him or them, concerning the Treason or Offences contained in the said Indictment, unless the Party or Parties arraigned shall willingly without violence confess the same.

6. Provided likewise, and be it enacted, That this Act, or any thing therein contained, shall not extend to deprive either of the Houses of Parliament, or any of their Members of their just antient Freedom, and Privilege of debating any Matters or Business which shall be propounded or debated in either of the said Houses, or at any Conferences or Committees of both or either of the said Houses of Parliament, or touching the Repeal or Alteration of any Old or preparing any New Laws, or the redressing of any Publick Grievance ; but that the said Members of either of the said Houses, and the Assistants of the House of Peers and every of them, shall have the same Freedom of Speech, and all other Privileges whatsoever, as they had before the making of this Act ; any thing in this Act to the contrary thereof in any wise notwithstanding.

7. Provided always, and be it ordained and enacted, That no Peer of this Realm shall be tryed for any Offences against this Act, but by his Peers ; (2.) And further that every Peer who shall be convicted of any Offence against this Act, after such Conviction, be disabled during his life, to sit in Parliament, unless his Majesty shall

52  
shall graciously be pleased to pardon him? (3.) And if his Majesty shall grant his Pardon to any Peer of this Realm, or Commoner convicted of any offence against this Act, after such Pardon granted, the Peer or Commoner so pardoned shall *be restored* to all intents and purposes as if he had never been convicted, any thing in this Law to the contrary in any wise notwithstanding.

## Notes.

**T**Hough the Wisdom of our Legislators is not generally for bringing *Words* within the Compass of *Treason*, yet upon emergent occasion it has been done, but then with a *Temporary* Limitation, as by the Statute 13 *Eliz.* here referr'd unto, during the Life of that Queen; in imitation whereof this present Act was made to remain in force during only the Life of our late Sovereign King *Charles* the Second. And the Reasons for making this Temporary Law are assigned in the *Preamble*.

This Statute makes three sorts of Offences. Some *High Treason*; some that *disable* and incapacitate from holding any *Place* or *Office*? and some that are punishable by *Premunire*.

As to the first, 'tis hereby declared to be High Treason during the Life of his late Majesty.

1. Within or without the Realm to compass or intend the Death, Destruction, Maim, Wounding, Imprisonment or Restraint of the King.

2. Or to deprive or depose him, or *Levy War* against him, within the Realm or without, to stir up Foreigners to invade the Realm.

If such Compassings or Intentions be expressed, uttered or declared by any *Printing, Writing, Preaching, or malicious and advised speaking*.

Being legally convicted thereof upon the Oaths of *two lawful and credible* Witnesses: [By which words, the Statute



statute seems to enjoin and require some more *then Ordinary* Scrutiny into the Credit of the Witnesses, for otherwise *Legal* had been enough (and so is every Man not Convict of Perjury) but Witnesses, in this case must not be only *Legal* but *Credible*, not infamous, scandalous, or suspected.]

As to the second, maliciously and advisedly to publish or affirm during his present Majesty's Life, that the King is an—*Heretick*—or—a Papist—or that he endeavours to introduce Popery.

Or maliciously and advisedly by Writing, Printing, Preaching, or speaking to utter, express or declare any Words, Sentences or thing, to stir up the People to hatred or dislike of the Person of his Majesty or the established Government.

Whoever is legally convicted of any of these Crimes shall be disabled to hold any Place, Office, or Promotion, Ecclesiastical, Civil or Military. And besides be liable to such Punishments as by the common Laws or Statutes may be inflicted.

As to the Third, to declare, publish, or affirm, first, that the *Old long Parliament* of 40 is not dissolved, or ought to be in being. Secondly, That there lies any obligation on ones self, or any other Person, from any Oath, Covenant, or Engagement, to endeavour a change of Government either in Church or State.

Thirdly, that *either or both Houses* of Parliament have legislative Power without the King, or any other words to the same effect.

The Person so offending shall incur the Penalty of a Premunire, which by the Statute of 16 Rich. 2 Cap. 5. here referred unto, is this, *viz.* To be put out of the King's Protection, their Lands and Tenements, Goods and Chattels, forfeited to the King, and their Bodies to be seized, &c. But in this Act of the 13 Caroli, there are these Proviso's.

1. As for the *two last sorts* of Offences that are not Treason, none shall be prosecuted but by *order of the King*, under his sign Manual, or the Privy-Council.

2. As for the Crimes made *Treasons*, none shall be Indicted or Convicted, unless they be *ACCUSED* by two lawful and credible Witnesses, touching the Addition of the Word credible to lawful (which is here again repeated) we have spoken before; but must here further observe,

1. That by these express Words, this Statute provides that no Man shall be Indicted, [that is, have a Bill found against him] upon this Statute for Treason, unless he be *Accused*, [that is, unless the Matter be sworn against him before the Grand Jury] by two not only lawful, but credible Witnesses, for the Words are not only, he shall not be convicted [which is the Work of the Petty Jury, or Jury of Life and Death, as 'tis commonly called,] But he shall be Indicted [which is the Business of the Grand Jury] and therefore Grand Juries besides their general and ordinary Right and Power by Law, have, when any Person is Indicted upon this Statute, a special right and direction from the Act it self to examine and be well satisfied in the Credibility of the Witnesses; which if duly considered would perhaps much mitigate the Clamours lately raised against some Juries for their returning some Bills before them *Ignoramus*, though the Matters therein were roundly sworn unto by *Legal*, but probably in their Esteem and Judgment, as they were upon their Oaths, not sufficiently credible Witnesses; especially when their Stories were no less incredible than their Persons.

Secondly, Note, that as a Person cannot be convicted or indicted, so neither can he be so much as committed for any offence made Treason by this Act by or upon the Oaths of any single Witness, though there should be never so much presumption that more may come in against him before he be brought to Tryal, for the Words are—  
“Unless he be thereof accused by the Testimony and De-  
position

"position of two lawful and credible Witnesses, which  
 "Witnesses at his Arraignment shall be brought before him  
 "face to face, &c. So that 'tis evidently intended the original accusation before the Justice or Magistrate that shall commit the Person must be by two such Witnesses, and that the same two Witnesses (and not others leaving them that first charged him out, though yet others no doubt may be added to them) must give Evidence to the Grand Jury, and at his Tryal.

3. There is in this Act a *third* Proviso, that no Person shall incur any the Penalties in this Act mentioned unless, 1. He be prosecuted, [that is charged before a Magistrate, or committed] within six Months after the Offence committed. Secondly, and unless he be Indicted thereupon within three Months after such Prosecution. So that if in either of these respects the time be elapsed, the Grand Jury ought not to find the Bill.

4. Provided, this Act shall not infringe the Privileges or Freedom of debates in either of the Houses of Parliament, or any Committee of them.

5. That a Peer shall be tryed for any offence against this Act by his Peers, but if convicted, shall be disabled to sit in Parliament during Life. And thus much for what is Treason at this day.

By the Statute of 1 and 2 Phil. and Mar. cap. 10. *All Tryals for Treason shall be only according to the Course of the common Law.* And though the greater part of that Statute, being Temporary, be expired, yet this Clause is still in force

The Judgment in all Cases of High Treason, except for counterfeiting Coin (for a Man) is, That he shall be drawn on an Hurdle or Sledge to the place of Execution, and there be hanged by the Neck, to be cut down, being yet alive his Privy Members cut off, his Bowels ript up, taken out, and burnt before his face, his Head severed from his Body, his Body divided into four Quarters, which are to be disposed of as the King shall order—But for counterfeiting Coin, only Drawn and Hang'd. And in both cases for

a Woman (for Modesty sake) it is only that she shall be burnt.

The Reasons or Signification of this horrid Judgment on a Man for *Treason*, are thus by some rendred and interpreted.

1. He is drawn on a *Sledge* or *Hurdle* on the Ground in the Dirt, to shew that his Pride is brought down, for *Treason* commonly springs from Ambition.

2. On this Hurdle he is drawn backward, to shew that his actions have been contrary to order, unnatural and preposterous.

3. He is hanged between Heaven and Earth, as unworthy of either.

4. He is cut down yet alive, and his Privities cut off, to shew that he was unfit to propagate any Posterity.

5. His Head is severed from his Body, because his mischievous Brain contrived the *Treason*.

6. His Body is divided, to shew that all his Machinations and Devices are torn to pieces, and brought to nought; and into four parts, that they may be scattered towards the four Quarters of the World.

Heading being part of the Judgment in *Treason*, the King commonly to Persons of Quality Pardons all the rest of the Sentence, and so they are only Beheaded. But if a Person be attainted of Murther or any other Felony, if he be Beheaded, 'tis no execution of the Judgment, because there the Judgment always is, that he be hanged till he be dead, which cannot be altered. So that had Count *Coningsmark* lately been Convicted and Condemned for the Murther of Esquire *Thynn*, all his *Guinies* or his Friends could not have preserved him from the Gallows, unless they could have got an intire Pardon.

Any Person being Indicted for *Treason*, may Challenge [that is except against or refuse] *Five and Thirty* Jurors, peremptorily [that is for his pleasure] or for reasons best known to himself, and without assigning any Cause to the Court. But if he challenge more, that is above three full Juries, he forfeits his Goods, and Judgment of

of *Painfort & dure* [that is of being pressed to Death] shall pass upon him as one that refuseth the Tryal of the Law.

In Cases of *Murder* and *Felony* a Man cannot challenge peremptorily above the number of Twenty; but with cause he may except against more. And this is by the Statute of 22 H. 8. cap. 14.

And certainly since the Law of *England*, which is a *Law of Mercy*, does in *Favour of Life*, not only order a Man to be tryed by a Jury of his Country and Equals, but also allows him to refuse, and have liberty of excepting against so many of those as shall be impannelled for that purpose; It cannot be supposed that the same Law ever intended that the Prisoner should be denied a Copy of the Pannel of his Jury, that so by the Information of his Friends or otherwise, he may know their *Qualities*, *Circumstances* and *Inclinations*; for how else shall he know whom to challenge peremptorily, and whom to challenge with Cause; to allow a Man such liberty of Challenge, and give him no opportunity of such inquiry, is but to mock the Prisoner, to whom possibly the whole Jury by face and name may be utter strangers: and sure the Wisdom of our Laws never thought every Prisoner so skilled in Metoposcopy, that meerly by looking on a parcel of Men he could tell which of them were indifferent, and which biased against him.

Another Statute of King *Edward* the Third.

Anno 2 Edw. 3. cap. 2.

In what Cases only *Pardon* of *Felony* shall be granted, &c.

**I**Tem, Whereas Offenders have been greatly encouraged, because the Charters of Pardon have been so easily granted in times past of Man-Slaughters, Robberies, Felonies, and

other Trespasses against the Peace. (2.) It is ordained and enacted that such Charters shall not be granted, but only where the King may do it by his Oath, that is to say, where a Man slays another in his own Defence, or by Misfortune. (3.) And also they have been encouraged because that the Justices of the Goal-Delivery, and of Oyer and Terminer, have been procured by great Men, against the Form of the Statute made in the 27th Year of the Reign of King Edward, Grandfather to our Lord the King that now is, wherein is contained that Justices assigned to take Assizes, if they be Lay-men, shall make deliverance, and if the one be a Clerk, and the other a Lay-man, that the Lay-Judge with another of the Country associate to him shall deliver the Goals. (4) Wherefore it is Enacted, that Justices shall not be made against the Form of the said Statute; (5) And that the Assizes, Attaints, and Certifications to be taken before Justices commonly assigned, which should be good Men and lawful, having knowledge of the Law, and none other, after the Form of another Statute made in the time of the said King Edward the First. (6.) And that the Oyers and Terminers shall not be granted, but before the Justices of the one Bench or the other, or the Justices Errants, and that great hurt, or horrible Trespasses, and of the King's special Grace, after the Form of the Statute theretofore ordained in time of the said Grandfather, and none otherwise.



## The Comment.

Touching this Statute and several others to the same purpose, as 14 *Edw. 3. cap. 14.* and 10 *Edw. 3. cap. 2.* and 13 *R. 2. cap. 1.* and 16 *R. cap. 6.* &c.

We shall only give you the Words of Cook in the third Part of his Instit. Fol. 236.

What things the King may pardon, and in what manner, and what he cannot pardon, falleth now to be treated of.

**I**N case of death of Man, Robberies and Felonies against the Peace, divers Acts of Parliament have *Re- strained the Power of granting Charters of Pardons*; first, that no such Charters shall be granted, but in case, *where the King may do it by his Oath.* Secondly, That no Man shall obtain *Charters out of Parliament.* Stat. 4. *Edw. 3. cap. 13.* And accordingly in a Parliament Roll it is said, [for the Peace of the Land it would much help, if good Justices were appointed in every County, if such as be let to mainprize do put in good Sureties, as Esquires or Gentlemen: And that *no Pardon were granted but by Parliament*] Thirdly, for that the King hath granted Pardons of Felonies upon *false Suggestions*, it is provided, that every Charter of Felony which shall be granted at the Suggestion of any, the name of him that maketh the Suggestion shall be comprised in the Charter, and if the Suggestion be found untrue, the Charter shall be disallowed. And the like Provision is made by the Statute of 5 *H. 4. Cap. 2.* for the Pardon of an Approver.

Fourthly, It is provided that no Charter of Pardon for Murther, Treason, or Rape, shall be allowed, *&c.* If, they be not specified in the same Charter, Statute 13

R. 2. Before this Statute of 13. R. 2. by the Pardon of all Felonies, Treason was pardoned, and so was Murder, &c. At this day by the Pardon of all Felonies, the death of Man is not Pardoned. These be excellent Laws for direction, and for the Peace of the Realm. But it hath been conceived (which we will not question) that the King may dispence with these Laws by a *Non Obstante*, (notwithstanding,) be it General or Special (albeit we find not any such Clauses of *Non Obstante*) notwithstanding to dispense with any of these Statutes (but of late times) These Statutes are excellent Instruction for a Religious and Prudent King, to follow, for in these Cases, *Ut summæ potestatis Regia est posse quantum velit, sic Magnitudinis est velle quantum possit* (as it is the highest Kingly Power to be able to Act what he Wills, so it is his Greatness and Nobleness to Will only what he lawfully can) hereof you may read more in Justice Standford, Lib. 2. Cap. 32. in divers places of that Chapter, of his grave Advice in that behalf. Most certain it is, that the Word of God has set down this undisputable general Rule, *Qui non profectur Cito Contra malos sententia, filii hominum sine timore ullo perpetrant*. (Because Sentence against evil Men is not speedily Executed, therefore the Hearts of the Children of Men are set in them to do evil) and thereupon the Rule of Law is grounded. *Spes Impunitatis. Continuum Affectum iribus delinquendi* [the hope] of Impunity encourageth Offenders *Et venia facilis Incentivum est Delinquendi* [and the Facility of obtaining Pardon, is an Incentive to commit Offences] This is to be added, that the Intention of the said Act of 13. R. 2. was not, that the King should grant a Pardon of Murder by express Name in the Charter, but because the whole Parliament conceived, that he would never Pardon Murder by special Name, for the Causes aforesaid, therefore that Provision made, which was (as in other Cases I have observed) grounded upon the Law of God, *Quicumque effuderit humanum sanguinem, fundetur sanguis illius; ad imaginem*

*imaginem quippe Dei creatus est homo nec aliter Expiari potest, nisi per ejus sanguinem, qui alterius sanguinem effuderit* [whosoever shall shed Man's Blood, by Man also shall his Blood be shed, because Man was created after the Image of God, neither can it be expiated otherwise then by his Blood, who spilt the Blood of another.] And the Words of every Pardon is after the Recital of the Offence, *nos pietate moti, &c. we being moved with Piety, &c.* But it can be no Piety to violate an expresse Law of God, by letting Murder escape unpunisht. Thus Coke, whereby we see what opinion he had of such Pardons.

A brief Digression concerning the Nature of

A P P E A L S.

THIS Discourse of Pardons puts us in mind of another kind of Legal Prosecution called an *Appeal*: of which it may be very convenient to give the Reader some brief account. You must know then for several Offences, for which a Man deserveth death, and particularly for *Murder*, there are *two ways* to bring him to Answer for the same, one by *Indictment*, which is at the *King's Suit*, and the other by *Appeal*, which is at the *Suit of a Party* which is wronged or injured by the Murder: as a *Woman* whose Husband, or a *Child* or *Brother* whose Father or Brother is Killed.

Now upon an Indictment, if the Offender be found Guilty, because its to be at the Suit of the King, it has been said by some, may be and too often, a Pardon has been obtained (though even That too be against Law, as appears by the Premises) but in an *Appeal* all agree, the King can grant no Pardon, nay if a Person be tryed by Indictment, and Acquitted or Convicted, and get a Pardon, yet an Appeal may be brought, and if he be thereupon Convicted, notwithstanding such his former Acquittal or Pardon, he must be Hanged. D.4. The

The word Appeal is derived from the *French Verb Appeller*, to Call, because he or she that brings it, calls the Defendant to Judgment; but the meaning thereof is all one with an *Accusation*, and is peculiarly in Legal signification applied to Appeals of three sorts; first an Appeal brought by an Heir Male for some wrong done to his Ancestor whose Heir he is. Secondly, Of wrong done to an Husband, and is by the Wife only, if it be for the death of her Husband, to be Prosecuted. The Third is of wrongs done to the Appellants themselves, as for Robbery, Rape or Maim, *Coke 1. Instit. Sect. 500.*

Note that this Appeal must be brought *within a Year and a Day* after the Murther is committed. For afterwards it cannot be brought at all. And antiently it was customary not to bring an Indictment for the King, till after the Year and the Day, waiting in the mean time for the Prosecution of the Party, but this was found very inconvenient, for the Party was frequently compounded with, and at the Years end the Business was forgot, and the Offenders escaped Justice.

And therefore the same was altered by the Statute *Hen. 7. Cap. 1.* Whereby it is enacted, 'That the Coroner shall do his Office, and the Offenders may be Arraigned at any time within the Year, at the King's Suit, but if Acquitted, yet the Party within the Year and Day should have liberty to bring an Appeal against such Person, either Acquitted or Attainted, if the Benefit of the Clergy be not before thereof had. And in order thereunto that when any Person happened to be acquitted for the Death of a Man, within the Year, the Justices before whom he is acquitted, shall not suffer him to go at large, but either to remit him again to the Prison, or else to let him to Bail after their discretion, till that the Day and the Year be passed, that so he may be forth coming to answer an Appeal. If it shall happen to be brought.

Thus

Thus that Statute; as to the latter Clause whereof, you see the Judges have Power in Case of Acquittal to keep the Party in Prison still, till the Day and Year be over. Or else to admit him to Bail; and though this be left to their Discretion, yet it must not be such a Discretion, as confounds all Discretion: but they must weigh the Circumstances, and go according to Law and Judgment; and certainly the Law intended such Bail; if any be accepted, should be bound Body for Body, for otherwise it seems no security. And therefore many wise Men wondered the other day when Count Conningmark was acquitted on the Indictment for the Barbarous Murder of Esquire Thynn, that he was suffered to go so soon abroad, for being a *Stranger*, he was never like to come again into *England*, and being so rich, what values he to discharge the Forfeitures of his Sureties Recognizances, which likewise may be easily Compounded. At most, the *Forfeiture is to the King*, and what is that to the next Heir or Kinsman? He is by this means *Quitted* of his Legal Remedy to Revenge the Blood of his near and dear Relation—*Sic hac Obiter.*

### The Form of an Appeal of Murder.

IC. Hic Instanter Appellat W. E. &c. (In English thus)  
 I here instantly Appeals W. E. of the death of his Brother H. C. For that whereas the aforesaid H. was in the Peace of God and the King, at Tonbridge in the County of Kent, the twentieth day of March, in the thirty fourth Year of the Reign of our Lord Charles the Second, &c. at Seven a Clock in the Evening at the same Day, came the said W. E. as a Felon of our Lord the King, of a premeditated Assault, with Force and Arms, &c. and upon him the said H. C. then and there feloniously an Assault did make, and with

a certain Sword, of the price of twelve pence, which he then and there in his Right Hand did hold, the aforesaid H. upon his Head did strike, and one mortal wound of two Inches long in forepart of his Head, even unto the Brain to the said H. did then and there feloniously give; of which said wound the said H. for three days then next following did languish, and then, viz. the [such a] day of [such a Month,] he there died. [Or if the Case be so, Instantly dyed] And so the said W. H. as a Felon of our Lord the King, the aforesaid H. Feloniously did kill and Murder, against the Peace of our said Lord the King his Crown and Dignity: and that this he did wickedly, and as a Felon against the Peace of God, and our Lord the King the aforesaid offers that the same be detained as the Court of our Lord the King shall think meet. Diversity of Courts and Jurisdictions, Written in the time of King Hen. 8.

1. Note, That a Woman cannot now bring an *Appeal* for the Death of any other *Ancestors*, being barred here from by *Magna Charta*, Cap. 34. whereas (as you have heard) it is provided that none shall be taken or imprisoned upon the *Appeal* of any Woman for the Death of any Person, but only of her *Husband*. But she may at this day bring an *Appeal* of Robbery, &c. For therein she is not by that Statute restrained, *Coke 2d. Instit.* ch. 68.

2. The Woman that brings an *Appeal* for the Death of her Husband, must be his Wife, not only *de Facto* but *de Jure*, not only called and reputed, or cohabiting with him, but actually and legally Married to him; and of this a Wife the antient Law-Books speaks, *de morte viri* her *Brachia sua interfecti*, the Husband is killed within her arms, that is, whilst he was legally in her Possession; but



but that the *Appellant* and the Person killed, were not ever lawfully coupled in Matrimony, is a good Plea in an *Appeal*.

3. This right of *Appeal* for the Death of her Husband is annexed to her Widdow-hood, as her *Quarrentine* is, and therefore if the Wife of the Dead Marry again, her *Appeal* is gone, even although the Second Husband should dye within the Year and Day after the Murther of the First: For she must all the while before the *Appeal* be brought, continue *Famini viri sui*, his Widdow upon whose death the *Appeal* is brought: furthermore if she bring the *Appeal* during her Widdow-hood, and take a Husband whilst it is depending, the *Appeal* shall *Abate* (that is be out of Door) for ever, Nay, if on her *Appeal* she hath Judgment against the Defendant, if afterward she take an Husband before the Defendant be Hanged, she can never have Execution of death against him.

4. By the Statute of *Glocest.* made in the sixth Year of King *Edw. 1.* *Cap. 9.* It is enacted, that if an *Appeal* set forth the Deed, the Year, the Day, the Hour, the Reign of the King, and the Town where the Deed was done, and with what Weapon the Party was slain, the *Appeal* shall stand in effect, and shall not be abated for default of fresh Suit, if the Party shall Sue within the Year and the Day after the Deed done:

5. As for the Year and Day here mentioned, it is to be accounted for the whole Year according to the Calendar, and not for Twelve Months, at Twenty Eight Days to the Month. So likewise the Day intended is a Natural Day. And this Year and Day must be accounted after the Felony and Murther committed. Now if a Man be Mortally Wounded on the First Day of May, and thereof Languishes to the First Day of June, and then dies; the Question here arises whether the Year and the Day allowed for bringing the *Appeal* is to be reckoned from the giving the Wound, or the time of Death. Some have held the former: For that the Death ensuing hath relation to it, and that is the Cause of the Death, and the Offender did nothing the Day of the Death. But the

the Truth is, the Year and the Day shall be accounted only from the First of June, the Day of the Death; for before that time no Felony was committed: and thus it hath often been resolved and adjudged, and the Reason abovesaid grounded upon relation (which is a Fiction in Law) holdeth not in this Case. *Coke 2. Instit. Fol. 320.*

6. If an Appeal of Murther be brought, and depending the Suit, and after the Year and Day is elapsed, one become accessary to the Murther, the Plaintiff shall have an Appeal against him after the Year and Day past after the Death, but it must be brought within the Year and Day after this new Felony as accessary.

7. If a Man be Indicted for Murther, and Convicted only of Man-slaughter, and have the Benefit of his Clergy, it seems the Wife and Heir cannot afterwards bring their Appeal. Touching which the Lord Coke *3 Instit. Fo. 131.* Cites a Case in these words: Thomas Burghe, Brother and Heir of Henry Burghe brought an Appeal of Murther against Thomas Holcroft, of the Death of the said Henry: The Defendant pleaded, that before the Coroner, he was Indicted of Man-slaughter, and before Commissioners of Oyer and Terminer, he was upon that Indictment Arraigned, and confessed the Indictment, and prayed his Clergy, and thereupon was entered *Curia advisare vult*, the Court will consider; whereupon he demanded Judgment, whether the Plaintiff ought to maintain that Appeal he had brought. To which the Plaintiff demurred in Law. And in this Case three Points were adjudged by Sir Christopher Wray, Sir Thomas Gawdy and the whole Court.

First, That the Matter of the Bar had been a good Bar: the Appeal by the common-Law, as well as if the Clergy were Allowed: For that the Defendant, upon his Confession of the Indictment had prayed his Clergy, which the Court ought to have granted, and the deferring of the Court to be advised, ought not to prejudice the Party Defendant, albeit

albeit the Appeal was commenced before the Allowance of it.

The Second Point adjudged was, that this Case was out of the Statute of 3 Hen. 7. For that the words of that Act are,

If it fortune that the same Felons and Murtherers and Accessaries so Arraigned, or any of them, to be acquitted, or the Principal of the said Felony, or any of them to be attainted, the Wife or next Heir of him so slain, &c. may have their Appeal of the same Death and Murther against the Person so acquitted, or against the said Principals so attainted, if they be alive, and that THE BENEFIT OF HIS CLERGY THEREOF before be not had.

And in this the Defendant Holcroft, was neither acquitted, nor attainted, but convicted by Confession, and the Benefit of the Clergy only prayed, as is aforesaid, so as the Statute being penal concerning the Life of Man, and made in restraint of the common Law, was not to be taken by Equity, but is *Calus Omissus*, a Case omitted, and left to the common Law.

As to the Third, it was objected, that every Plea ought to have an apt Conclusion, and that the Conclusion in this Case ought to have been, *Et petit iudicium si prædiit Thomas Holcroft Iterum de eadem morte, de qua semel Convictus fuit, Respondere compelli debeat.* And he does ask judgment if the above mentioned Thomas Holcroft shall be obliged to answer again for the same Death he was once convicted of, but it was adjudged that either of both Conclusions was sufficient in Law: And therefore that exception was disallowed by the Rule of the Court.

Note, the ancient Law was, that when a Man had judgment to be Hanged in an Appeal of Death, that the Wife, and all the Blood of the Party slain should draw the Defendant to Execution, and Gascoigne said, *Istius fuit in diebus nostris*, so it was done in our Days.

And thus much occasionally about Appeals, which we the rather inserted because the Practice thereof (through

I know not whose negligence) has been almost *lost or forgot*; till some few Years ago a Woman in *Southwark* revived it against one that killed her Husband and got a Pardon for it, but she Prosecuted him on Appeal; had judgment against him, and he was Executed, since which time the same Course has been frequently talk'd of, and brought, but for the most part (to the shame I think of those Women or Children who make such Compositions for their Husbands or Fathers Blood) they have been by some secret Bargains or Compensations hush'd up and seldom effectually followed,

Two other Statutes of King *Edw. 3. Anno. 4.*  
*Edw. 3. cap. 14.*

*A Parliament shall be holden once every Year.*

**I**tem, It is accorded that a Parliament shall be holden every Year once, and more often, if need be.

*Anno 36. Edw. 3. Cap. 10.*

*A Parliament shall be holden once in the Year.*

**I**tem, For maintenance of the said Articles and Statutes, and Redress of divers MISCHIEFS and GRIEVANCES, which daily happen, a Parliament shall be holden every Year, as another time was ordained by Statute.

The Comment.

**B**efore the Conquest (as the Victory of Duke *William of Normandy* over *Harold* the Usurper, is commonly, though

though very improperly called) Parliaments were to be held twice every Year, as appears by the Laws of King Edgar, Cap. 5. and the Testimony of the *Mirroure of Justices*, Cap. 1. Sect. 2. For the Estates of the Realm, King Alfred caused the Committees (some English Translations of that ancient Book read, *Earls*, but the Word seems rather to signifie Commissioners, Trustees, or Representatives) to meet, and ordained for a Perpetual usage, that twice in the Year, or oftner, if need were, in time of Peace they should Assemble at London to speak their Minds for the Guiding of the People of God, how they should keep themselves from Offences, live in quiet, and have right done them by certain Usages and sound Judgments. King Edward the First (says Coke, 4. *Instit.* fol. 97.) kept a Parliament once every two Years for the most Part: And now in this King Edward the Third's time (one of the wisest and most glorious of all our Kings) It was thought fit to Enact by these two several Statutes, That a Parliament should be held once at least every Year, which two Statutes are to this day in full Force: For they are not Repealed, but rather Confirmed by the Statute made in the 16 of our present Sovereign, King Charles the Second, Cap. 1. Intituled, *An Act for the Assembling and holding of Parliaments once in three Years at the least*: The Words of which are as follow.

*Because by the ancient Laws and Statutes of this Realm, made in the Reign of King Edward the Third, Parliaments are to be held very often, your Majesties Humble and Loyal Subjects the Lords Spiritual and Temporal, and the Commons in this present Parliament Assembled, most Humbly do beseech your most Excellent Majesty, that it may be declared and enacted, (2) And be it declared and enacted by the Authority aforesaid, that hereafter the sitting and holding of Parliaments shall not be intermitted or discontinued above Three Years at the most: but that within Three Years from and after the Determination of this present Parliament, so from time to time within Three Years after the Determination of any other Parliament or Parliaments, or if there be occasion,*  
more.

more or ofner, Your Majesty, your Heirs and Successors, do Issue out your Writs for calling, Assembling and holding of another Parliament, to the End there may be a frequent Calling, Assembling and holding of Parliaments once in three Years at the least.

Agreeable to these good and wholsom Laws are those gracious Expressions and Promises in His Majesty's Proclamation touching the Causes and Reasons of Dissolving the two last Parliaments, Dated April 8. 1681. Irregularities in Parliament shall NEVER make us out of love with Parliaments, which we look upon as the best Method for healing the Distempers of the Kingdom, and the only means to preserve the Monarchy in that due Credit and Respect which it ought to have both at home and abroad. And for this Cause we are resolved by the blessing of God to have frequent Parliaments; and both in and out of Parliament to use OUR UTMOST ENDEAVOURS TO EXTIRPATE POPEERY, and to Redress all the Grievances of our good Subjects, and in all things to Govern according to the Laws of the Kingdom.

A DIGRESSION touching the Antiquity, Use, and Power of PARLIAMENTS, and the Qualification of such Gentlemen as are fit to be chosen the Peoples Representatives.

THE Recital of these several Laws for frequent calling of Parliaments, declaring the same to be of such importance or necessity to the Safety and Well-being of the Nation, Invites us to give the vulgar Reader some farther Information touching those most Honourable Assemblies, which though a Digression will I hope be no Transgression; for I am willing at any time to go a little out of my way, provided I may thereby meet with the Readers profit and Advantage.



## Of the Names and Antiquity of Parliaments.

**T**HE Word PARLIAMENT is *French*, derived from the three Words *Parler la ment*, to speak ones mind, because every Member of that Court should sincerely and discreetly speak his mind for the general good of the Commonwealth, and this name [saith *Coke 1 Instit. Fo. 110.*] was used before *William the Conqueror*, even in the time of *Edward the Confessor*. But most commonly in the *Saxons* time, it was called *Mictegemote* or *Witenage Moete*, that is the *Great Moete* [Meeting or Assembly, whence our *Ward Motes* in *London* receive their name to this day] or the *Wise Moete*, that is, the Assembly of the wise Men and Sages of the Land.

But this word Parliament is used in a double Sense.

1. Strictly, as it includes the *Legislative Power* of *England*, as when we say—*An Act of Parliament*; and in this Acceptation it necessarily includes the *King*, the *Lords*, and the *Commons*, each of which have a *Negative Voice* in Making Laws, and without their *joynt Consent* no new Laws can pass, that be obligatory to the Subject.

2. Vulgarly, the Word is used for the *Two Houses* the *Lords* and *Commons*, as when we say, the *King will call a Parliament*, His Majesty his dissolved a *Parliament*, &c.

The *Lords of Parliament* are divided into two sorts, viz. *Spiritual*, that is to say, the *Bishops* (who sit there in respect of their *Baronies*) parcel of their *Bishopricks* which they hold in their *Politic Capacity*, and *Temporal*.

The *Commons* are likewise divided into three Classes or Parts, viz. *Knights* or *Representatives of the Shires* or *Counties*; where note that though the *Writ* require two *Knights* to be chosen, and that they are called *Knights*, yet there is no necessity that they should actually have the *Degree of Knighthood*, provided they be but *Gentlemen*

men; for the Statute 23 Hen. 6. cap. 15; hath these words, *That the Knights of the Shires, for the Parliament hereafter to be Chosen, shall be notable Knights of the same Counties for which they shall be chosen, OR OTHERWISE such Notable Esquires or Gentlemen born of the same Countries, as shall be able to be, Knights, and no man to be such Knight which standeth in the Degree of a Teoman and under.*

Secondly, Citizens chosen to Represent Cities.

Thirdly, Burgesses, that is to say, those that are chosen out of Boroughs.

Note, that the Difference between a City and a Borough is this, a City is a Borough Incorporated, which is, or has within time of Memory been an Episcopal See, or had a Bishop; and this (although the Bishoprick be Dissolved, as *Westminster* having heretofore a Bishop, though none now) still remains a City. *Coke 3. Instit. Sect. 164.* Boroughs are Towns Incorporated, but such as never had any Bishops.

### *Of the Three Estates in Parliament.*

There has been a great Debate about the Three Estates, some zealously pleading, that the Bishops are one of the Three Estates of the Realm, and the Lords Temporal a Second, and the Commons-house the Third, and the King over all as a Transcendent by himself: others as stiffly deny this, and assign the King (as he is the Head of the Common-wealth) to be the First Estate, the Lords, as well Spiritual as Temporal joyntly, to be the Second, and the Commons-house the Third.

*Non opis est nostræ tantas Componere Lites.*

We shall not presume to undertake a Decision of this arduous Controversie, but in our poor Opinion the Matter seems to appear more difficult than really it is, by means that the contending Parties do not first plainly let down what it is they severally mean by the Word Estate. Which may be taken, 1. For a rank Degree, or.

For Condition of Persons considered by themselves, different in some notable Respects from others wherewith they may be compared. And in this respect my Lords the Bishops may very properly be said to be an Estate, or one of the Estates of the Realm, for then there will be several Estates, above the Number of three, for so in the House of Commons there may be said to be three Estates, viz. Knights, Citizens and Burgesses. And heretofore in the Days of Popery, when there were 26 Abbots and Priors that held *per Baroniam* too, as well as the Bishops, called to the Parliament, and sat in the Lords House, [see *Fullers Church-History, Lib. 6. 292.*] Whether they being Religious and Monastical Persons, whereas the Bishops were Seculars (no small difference in their account) might not as well claim to be a distinct Estate by themselves, as now the Bishops do, may be a Question.

But secondly, When we spake of three Estates in the Constitution of our *English Government*, 'tis most natural to mean and intend *such a poize in the Ballance*, or such an *Order or State*, as hath a *Negative Voice* in the *Legislative Power*: For as the *King* and *Commons* excluding the *Lords*, so neither the *King* and *Lords* excluding the *Commons*; much less the *Lords* and *Commons* excluding the *King*, can make any Law; but this glorious *Triplicity* must be in mutual Conjunction, and then from their united Influences spring our happy Laws. But in this sence the *Lords Spiritual* by themselves have no pretence to be a *distinct Estate*: That is, they have by themselves no *Negative Voice* (which I conceive the proper Characteristick or *essential Mark* of each of the three Estates; for suppose a *Bill* pass the *Commons*, and being brought into the *Lords House*, all the 26 Bishops should be against it, and some of the *Temporal Lords*, yet if the other *Temporal Lords* be more in number than the Bishops, and those that side with them, the *Bill* shall pass as the Act of the *whole House*; and if his Majesty please to give it his *Royal Assent*, is undoubted Law. Which demonstrates the Bishops have of themselves *no Negative Voice*, and conse-

consequently are none of the three Estates of the Realm. But if any will have them called an *Estate* and mean something else by it, if he please to explain his Notion, 'tis like I shall not contend with him about a fiddle fad-dle Word.

*Touching the Power of the Parliament.*

**T**HE Jurisdiction of this Court (saith Coke, 1 *Instit.* Sect. 164.) is so transcendent that it maketh, inlargeth, diminisheth, abrogateth, repealeth and reviveth Laws, Statutes, Acts and Ordinances concerning Matters Ecclesiastical, Civil, Martial, Marine, Capital, Criminal and Common. And 4 *Instit.* Fol. 36. The Power and Jurisdiction of the Parliament for making of Laws in proceeding by Bill, is so transcendent and absolute as it cannot be confined either for *Causes* or *Persons* within any bounds. Of this Court it is truly said, — *Si Antiquitatem spectes est vetustissima, si Dignitatem, est Honoratissima, si Jurisdictionem, est capacissima*; if you regard its Original, it is most Ancient; if its Dignity, it is most honourable; if its Jurisdiction, it is most capacious.

Sir Thomas Smith a great Statesmen, and in high esteem and place under Queen Elizabeth, in his Treatise, *de Republica Anglorum*, L. 2. C. 2. gives this Character of this supreme Court — *In Comitibus Parliamentariis, posita est omnis Anglia, absoluteque potestatis vis, veteres leges jubent esse irritas, novas inducunt; Presentibus juxta ac futuris modum constituunt; Fura & possessiones hominum privatorum commutant, Spurious natalibus restitunt, cultum divinum sanctionibus corroborant; Pondera & mensuras variant; JUS IN REGNO SUCCEDENDI PRESCRIBUNT, &c.* The most high and absolute Power of the Realm of England, consisteth in the Parliament; for the Parliament abrogateth old Laws, maketh new, giveth order for things past, and for things hereafter to be followed, changeth the Rights and Possessions of private Men; Legitimatis Bastards, Corroborates Religion with Civil Sanctions, alters Weights  
and

and Measures; PRESCRIBES THE RIGHT OF SUCCESSION TO THE CROWN, - defines doubtful Rights where there is no Law already made, appointeth Subsidies, Taxes and Impositions, giveth most free pardons, restoreth in Blood and Name, &c.

As for the Power of Parliaments over both Statute and Common Law, take it in the accurate and significant Words of a Parliament, viz. the Statute, of 25 Hen. 8. Cap. 21. as follows, — *Whereas this Realm recognizing no Superior under God, but the King, hath been, and is free from subjection to any Man's Laws but only to such as have been devised, made, and ordained within this Realm, for the Wealth thereof, or to such other as the People of this Realm have taken at their free Liberty by their own consent to be used amongst them, and have bound themselves by long use and custom to the observance of the same; not to the observance of the Laws of any Foreign Prince, Potentate or Prelate, but as to the accustomed and ancient Laws of this Realm, originally established as Laws of the same by the said Sufferance, Consents and Custom, and none otherwise. It standeth therefore with natural Equity and good Reason, that all and every such Laws Human made within this Realm or induced into this Realm, by the said Sufferance, Consents and Custom, the King and the Lords Spiritual and Temporal and Commons representing the whole State of the Realm, in the most High Court of Parliament, have full Power and Authority to dispense with those and all other Human Laws of the Realm, and with every one of them, as the Quality of the Persons and matter shall require. And also the said Laws and every of them to abrogate, annul, amplify or diminish, as to the King, Nobles and Commons of the Realm; present in Parliament, shall seem most meet and convenient for the Wealth of the Realm.*

Thus far that notable Statute, which in truth is only Declarative, and in Affirmance of the Ancient common Law of England.

*The particular Business of Parliaments.*

BY what hath been said, you may perceive the Work of an *English* Parliament is not (as some would have it) only to be *Keys* to unlock the Peoples Purses. That is but one part, and perhaps one of the least parts too, of their Office. They are to propose *new Laws* that are wanting for general good, and to press the *Abrogation* of Laws in being, when the Execution of them is found *prejudicial* or *dangerous* to the Publick. They are to provide for Religion, and the Safety and Honour of the Nation, they have a Power (as you have heard from Sir Thomas Smith) to order the Right to the Crown (understand all this with the King's consent) and they have very frequently undertaken and actually limited the same, contrary to and different from the common Line of Succession. Nay by the Statute of the 13 *Eliz.* Cap. 13. It is expressly enacted, *That if any Person shall in any wise hold and affirm or maintain, that the Queen with and by the Parliament of England is not able to make Laws and Statutes of sufficient force and validity to limit and bind the Crown of this Realm, and the Descent, Limitation, Inheritance and Government thereof, or that this present Statute, or any part thereof, or any other Statute to be made by the Authority of the Parliament of England, with the Royal Assent for limiting the Crown, is not, are not, or shall not, or ought not to be for ever of good and sufficient force and validity to bind, limit, restrain and govern all Persons, their Rights and Titles, that in any wise may or might claim any Interest or Possibility in or to the Crown of England, in Possession, Remainder, Inheritance, Succession or otherwise howsoever, and all other Persons whatsoever, every Person so holding, affirming or maintaining during the Life of the Queen, shall be adjudged an high Traitor, and suffer and forfeit as in Cases of High Treason is accustomed; and every Person so holding, affirming or maintaining, after the decease of our said Sovereign Lady, shall forfeit all his Goods and Chattels.*

Which



Which Clause and last mentioned Penalty is to this day in force, and ought to be considered by any who shall now pretend that an Act of Parliament cannot dispose of the Succession.

As for the Right of making War and Peace, the same is granted to be part of the High *Prerogatives* of our Kings, yet the wisest of our Monarchs have very rarely entered into any War without the Consent of Parliaments; for, 1. Who could give them better Council in such a difficult Affair? 2. The People would more readily expose their Persons in such a War, the *Justice* and *Expediency* whereof was approved by their *Representatives*. 3. The King from thence might more certainly promise himself *Supplies* of Money to carry on the same.

But nothing is more properly the Work of a Parliament than to redress *Grievances*. To take notice of *Monopolies*, and *Oppressions* to curb the *Exorbitances* of pernicious *Favourites*, and *ill Ministers of State*. To punish such mighty *Delinquents* as look upon themselves too big for the ordinary reach of Justice, to inspect the Conduct of such as are intrusted with Administration of the Laws, or disposal of the publick *Treasure* of the Nation; All Crimes of these and the like kinds, are publick *Nuances*, common mischiefs, and wound the *whole Body* politick in a vital part, and can scarce at all be found out or redressed (by reason of the Power and Influence of the Offenders) but in this *great and awful Senate*; before whom the haughtiest Criminals tremble; and it has been observed that they scarce ever prosecuted any (though never so great, or highly in favour at Court) but sooner or latter they hit him, and it proved his Ruine. Take a few Examples. King Edward the Second dotes upon Pierce Gaveston (a *French Gentleman*) he wastes the King's Treasures, has undeserv'd *Honours* conferred on him, affronts the ancient Nobility. The Parliament in the beginning of the King's Reign complains of him, he is banisht into *Ireland*: The King afterwards calls him home, and marries him to the Earl of *Gloster's* Sister, the Lords complain

complain again so effectually, that the King not only consents to his *second Banishment*, but that if ever he returned or were found in the Kingdom, he should be held and proceeded against as an Enemy to the State. Yet back he comes, and is received once more by the King as an Angel, who carries him with him into the North, and hearing the Lords were in Arms to bring the said *Gaveston* to Justice, plants him for safety in *Scarborough Castle*, which being taken, his Head was chop't off.

In King *Richard* the Second's time, most of the Judges of *England* to gratifie certain corrupt and pernicious Favourites about the King, being sent for to *Nottingham*, were by Perswasions and Menaces prevailed with to give false and illegal Resolutions to certain questions proposed to them, declaring certain Matters to be Treason, which in truth were not so: for which in the next Parliament they were called to Account, and attainted; and Sir *Robert Tresilian* Lord Chief Justice of *England*, was drawn from the *Tower* through *London* to *Tyburn*, and there hanged: as likewise was *Blake* one of the King's Council, and *Uske* the under Sheriff of *Middlesex*, who was to pack a Jury to serve the present Turn, against certain Innocent Lords and others whom they intended to have had taken off; and five more of the Judges were banish'd, and their Lands and Goods forfeited. And the Arch-bishop of *York*, the Duke of *Ireland*, and the Earl of *Suffolk*, three of the King's Evil Councillors, were forced to fly, and died miserable Fugitives in Foreign Parts.

In the beginning of King *H.* the 8th's Reign, Sir *Richard Empson* Knight, *Edmond Dudley* one of the Barons of the *Exchequer*, having by colour of an Act of Parliament to try People for several Offences without Juries, committed great Oppressions, were proceeded against in Parliament and lost their Heads.

In the 19 Year of the Reign of King *James* at a Parliament holden at *Westminster* there were shewn (saith *Baker's Chron. Fol. 418.*) two great Examples of Justice; which

which for future Terror, are not unfit to be here related; one upon Sir *Giles Mompesson*, a Gentleman otherwise of good parts; but for practising sundry Abuses in erecting and setting up New Inns and Ale-houses, and exacting great Sums of Money of People, by pretence of Letters Patents granted to him for that purpose, was sentenced to be degraded from his Knighthood, and disabled to bear any Office in the Common-wealth, though he avoided the Execution by flying the Land; but upon Sir *Francis Mircel*, a Justice of Peace of *Middlesex*, and one of the Chief Agents, the Sentence of Degradation was executed, and he made to ride with his face to the Horsetail through the City of *London*. The other Example was of *Sir Francis Bacon*, *Viscount St. Albans*, Lord Chancellor of *England*, who for *Bribery* was put from his place and committed to the Tower.

In King *Charles the First's* time, most of the Judges that had given their opinions contrary to Law in the Case of Ship-Money, were call'd to account, and forced to fly for the same. And in the 19 Year of our present Sovereign, the Earl of *Clarendon*, Lord Chancellor of *England* being questioned in Parliament and retiring thereupon, beyond the Seas, was by a special Act banished and disabled. In a Word, it was well and wisely said of that excellent Statesman, Sir *William Cecil*, Lord *Burleigh*, and High Treasurer of *England*, That he knew not what an Act of Parliament might not do; which Apothegm was approved by King *James*, and alledged (as I remember) in one of his published Speeches.

And as the Jurisdiction of this Court is so transcendent, so the Rules and Methods of Proceedings there, are different from those of other Courts. For (saith *Coke*, 4 *Inst.* fol. 15.) *As every Court of Justice hath Laws and Customs for its Direction, some by the common Law, some by the Civil and Canon Law, some by peculiar Laws and Customs, &c. So the High Court of Parliament suis propriis Legibus & Consuetudinibus Subsistit: Subsists by its own peculiar Laws and Customs. It is, Lex & Consuetudo*

Parliamenti, the Law and Custom of Parliament, 1821. weighty Matters in any Parliament moved concerning the Peers, or Commons in Parliament assembled, ought to be determined, adjudged and discussed by the Course of the Parliament and not by the Civil Law, nor yet by the common Laws of this Realm used in more Inferior Courts. Which was so declared to be, Secundum Legem & Consuetudinem Parliamenti according to the Law and Custom of Parliament, concerning the Peers of the Realm, by the King, and all the Lords Spiritual and Temporal, and the like pari ratione (for the same reason) is for the Commons, for any thing moved or done in the House of Commons: and the rather, for that by another Law and Custom of Parliament, the King can not take notice of any thing said or done in the House of Commons, but by the report of the House of Commons; and every Member of the Parliament hath a judicial Place, and can be no Witness. And this is the Reason why Judges ought not to give any opinion of a Matter of Parliament, because it is not to be decided by the common Law, but Secundum Legem & Consuetudinem Parliamenti according to the Law and Custom of Parliament: And so the Judges in divers Parliaments have confessed. And some hold, that every offence committed in any Court punishable by that Court, must be punished (proceeding criminally) in the same Court, or in some higher, and not in any Inferior Court; and the Court of Parliament hath no higher.— Thus Ceke.

Great complaints have been made about a late House of Commons sending for some Persons into Custody by their Serjeant at Arms; but certainly they did no more therein, than what their Predecessors have often done. Every Court must be supposed Armed with a Power to defend it self from Affronts and Insolencies; In those Ages when the House has appointed particular Committees, hath it not been usual to order that they shall be impower'd to send for Papers, Persons and Records? But to bring Men to a sober Consideration of their Duty and Danger, I shall give a few Instances, besides those before mentioned.

mentioned, of what the House of Commons hath done in former Ages.

1. *Anno 20. Jacobi.* Doctor *Harrie* Minister of *Blechingly* in *Surrey*, for misbehaving himself by *Preaching* and otherwise, about Election of Members of Parliament, upon complaint, was called to the Bar of the House of Commons, and there as a Delinquent on his knees, had Judgment to confess his fault there, and in the Country, in the Pulpit of his Parish Church, on Sunday before Sermon.

2. *Anno 21. Jacobi.* *Ingrej*, under Sheriff of *Cambridge-shire*, for refusing the Poll upon the promise of Sir *Thomas Steward* to defend him therein, kneeling at the Bar, received his Judgment to stand committed to the Serjeant at Arms, and to make Submission at the Bar, and acknowledge his offence there, and to make a farther Submission openly at the Quarter Sessions, and there also to acknowledge his fault.

3. *Anno 20. Jacobi.* the Mayor of *Arundel*, for misbehaving himself in an Election, by putting the Town to a great deal of charge, not giving a due and general warning, but packing a Number of Electors, was sent for by Warrant, and after ordered to pay all the charge, and the House appointed certain Persons to adjust the Charges.

4. And 2 *Car. 1.* Sir *William Wray* and others, Deputy-Lieutenants of *Cornwal*, for assuming to themselves Power to make whom they pleas'd Knights, and defaming those Gentlemen that then stood to be chosen, sending up and down the Country Letters for the Train'd-Bands to appear at the Day of Election, and Menacing the County under the Title of his Majesty's Pleasure; had Judgment given upon them, to be committed to the Tower. To make Recognition of their Offence at the Bar of the House upon their knees, which was done. 3. To make a Recognition and Submission at the Assizes in *Cornwal*, in a Form drawn by a Committee.

4. But most remarkable are the Proceedings in the same Parliament, Anno. 1628. against Doctor Manwaring who being there charged with Preaching and Publishing offensive Sermons, and the same referred to a Committee; they brought in their Report, which was delivered to the House with this Speech, as I find it in Dr. Fuller's Church-History, L. 41. Fol. 129.

Mr. Speaker,

I Am to deliver from the Sub-Committee, a Charge against Mr. Manwaring, a Preacher and Doctor of Divinity but a Man so Criminous, that he hath turned his Titles into Accusations; for the better they are, the worse is he, the hath dishonoured them. Here is a great Charge that lies upon him, it is great in it self, and great because it hath many great charges in it: Serpens qui Serpentem Devorat, fit Draco; his Charge having digested many Charges into it is become a Monster of Charges. The main and great one is this; a Plot and Policy, to alter and subvert the Frame and Fabrick of this State and Commonwealth. This is the great One, and it hath others in it, that gains it more greatness: For to this end, he labours to infuse into the Conscience of his Majesty the perswasion of a Power not bounding it self with Laws, which King James of famous memory, calls in his Speech in Parliament, 1619. Tyranny, yea, Tyranny accompanied with Perjury.

2. He endeavours to perswade the Consciences of the Subjects, That they are bound to obey Illegal Commands; yea he Damns them for not obeying them.

3. He Robs the Subjects of the Property of their Goods.

4. He Brands them that will not lose this Property with most scandalous and odious Titles, to make them hateful both to Prince and People, so to set a Division between the Head and Members, and between the Members themselves.

5. To the same end (not much unlike to Faux and his Fellows) he seeks to blow up Parliaments and Parliamentary Power. These five being duly viewed, will appear to be so many



many charges, and withal they make up the main and great Charge, a mischievous Plot to alter and subvert the Frame and Government of this State and Commonwealth. And now that you may be sure that Mr. Manwaring, though he leave us no propriety in our Goods, yet he hath an absolute propriety in his Charge; Audite ipsam Beluam, hear Mr. Manwaring by his own words making up his own charge.

Here he produced the Books, particularly insisting on p. 19, 29, and 30. in the First Sermon, p. 35, 46, and 48. in the Second Sermon; all which passages he heightened with much Eloquence and Acrimony; thus concluding his Speech, *I have shewed you an evil Tree that bringeth forth evil Fruit; and now it rests with you to determine, whether the following Sentence shall follow, cut it down, and cast it into the Fire.*

Four days after the Parliament proceeded to his Censure, consisting of eight Particulars, it being ordered by the House of Lords against him, as followeth.

1. To be *Imprisoned* during the Pleasure of the House.
2. To be *Fined* a Thousand Pounds.
3. To make his *Submission* at the Bar in this House, and in the House of Commons, at the Bar there, *in Verbis Conceptis*, a set Form of Words framed by a Committee of this House.
4. To be *Suspended* from his Ministerial Function three Years, and in the mean time a sufficient Preaching-man to be provided out of the Profits of his living, and this to be left to be performed by the Ecclesiastical Court.
5. To be disabled for ever hereafter *from Preaching at Court*.
6. To be for ever disabled of having any *Ecclesiastical Dignity* in the Church of England.
7. To be incapable of any *Secular Office* or Preferment.
8. That his Books are worthy to be *burned*, and his Majesty to be moved, that it may be so in London, and both the Universities.

And accordingly he made his humble Submission at both the Bars in Parliament, on the Three and Twentieth of June following, and on his Knees, before both Houses, submitted himself, with outward Expressions of Sorrow, as followeth.

I do here in all sorrow of Heart, and true repentance, acknowledge those many Errors and Indiscretions which I have committed in Preaching and Publishing the two Sermons of mine, which I called Religion and Allegiance, and my great faults in falling upon this Theme again, and handling the same rashly, scandalously and unadvisedly in my own Parish Church in St. Giles in the Fields, the Fourth of May last past. I humbly acknowledge these three Sermons to have been full of dangerous Passages and Inferences, and scandalous Aspersions, in most part of them. And I do humbly acknowledge the just Proceedings of this Honourable House against me, and the just Sentence and Judgment pass'd upon me for my great Offence. And I do from the bottom of my Heart crave Pardon of God, the King, and this Honourable House, and the Commonwealth in general, and those worthy Persons adjudged to be respected upon by me in particular, for these great Offences and Errors.

The Truth is, 'tis this High Court of Parliament, that only can hinder the Subject from being given up as a Prey to the Arbitrary Pleasure not only of the Prince if he should attempt it, but (which is ten times worse) to the unreasonable Passions and Lusts of Favourites, chief Ministers and Women; when otherwise instead of a Monarch (who as sometimes it may happen shall govern but in name) we might be ruled like the Ancient French by an insolent Major part of the Pallace, who will be sure to mind the private Interest of himself and Family more than that of the Prince or the publick Good; Or like the Turkish Empire under a Weak Grand Seignior, by the Prevailing Concubine of the Seraglio, who is perhaps herself managed by no higher Dictates than that of her chief Eunuch or She-Slave. It is strange therefore to observe the Impotent Ambition of some Men (and such as, with

Shame

shall let us speak it, boast themselves *English-men* too) who (provided they may trample upon, and domineer over their Inferiors) care not how much their *Superiors* do the like over them. Their Souls (like most insolent Mens) being mean enough to submit thereunto; or who can enough deplore and abhor the ignorance and stupidity of some *lazy insignificant Gentlemen*, who care not how things go, provided they may enjoy their *Hawks, Hounds, and Bowling-Green Meetings*; whilst not only for *Divinity*, but *Politicks* too, they are govern'd by their more *Impertinent Chaplain*, or the Parson of their Parish. Now nothing is more obvious than the Designs of some idle, covetous, Sycophant *Clergy-men*, who like Ivy, though it cannot grow without the support of the Oak and yet will destroy it at last, do in private Parlors over the Glass, whilst Healths go round, as well as in their Pulpits over their Cushions, set up Absolute Monarchy to be *Fure Divino*, declaiming against the unreasonable Stubbornness of any Parliament that will not give away the Peoples *Money*, and submit themselves to be *Flee'd*; as often as the prime Minister or Favourite think fit, they cry up the Prince like an Angel so long as he will be their *Executioner to Whip, Imprison, or hang* all that will not truckle to their own Pride and Avarice; or refuse to give up their Souls once again to be managed by an *Implicite Faith*, whereby in the mean while these *Huffy Sir Johns* might not be troubled with those uneasy Tasks of *Studying, Preaching, &c.* but may have nothing else to do, but live at ease, keep their Coach and Horses, with a silly Curate to do all the Drudgery. Whilst they themselves are making Addresses above, by flattering and informing at some great *Nobleman's* or *Bishop's Table*, and railing against the Whiggs and Fanaticks, and speaking a good Word for Popery *by the By*; Or else if their parts reach so high, by some Sycophant Pamphlet, or Sermon against the Government establish'd by Law; They teach that Men have no property either in their Lives or Goods, but only during the Prince's pleasure, &c. If there

be not such a parcel of things as these that call themselves *Divines*, then *no Body* is concerned in this Character; but if there be, they are the worst of Men, and ought not only to be exposed, but severely punished.

Therefore since at present we live under so happy a Government, where being securely landed our selves, we behold the Shipwreck of our Neighbours, and since (notwithstanding the Goodness of our Sovereign King *Charles* the Second, *whom God preserve*) who has declared that he desires nothing less than the Alteration or Subversion of that Government (which as well by his Coronation Oath, as by his own Lenity and good Nature, he thinks himself obliged to observe) yet there are some, who for their own private ends, endeavour their utmost to remove our ancient *Land-marks*, introducing Popery and Slavery amongst us; It is therefore the indispensable Interest and Duty of all true *English-men* to maintain these Privileges conveyed from their Ancestors through so many Generations inviolable, upon which all our (earthly, and in a great Measure our *Spiritual*) Happiness, Safety, and well being depends. Nor can any Man in his Senses but acknowledge that the only right way to attain that end, is to look well to the Means, and that is by taking due care what Persons they choose for their Representatives, with whom they must trust their Estates, Lives and Liberties.

Now, this Government of a Prince by and with Parliaments, whenever the Condition and Necessities of the State require them, however according to its primitive Institution it was the best of all others, yet as well in that as in Christianity it self, there have been found out ways of Corruption, and that is, when either they sit too long, or too seldom, or are too frequently dissolved; too frequent Dissolutions being no less dangerous to the Subject, than too long Sessions. Nevertheless it may be in the Elector's Power to avoid the Inconveniences of both, and that is by making a good Choice, which ought to be without Charge; for the honest Country Gentleman designing no other

other private advantage but the true Service of his King and Country, hath no reason, nor is he able, once in half a Year to spend 4 or 500 Pounds, only to purchase a place full of Labour, Charge, Trouble and Danger, without any profit to himself, only to serve those who put him to such an unkind expence. And when honest Loyal Gentlemen are thus discouraged, if this Jealous humour amongst the Electors continue, the Papist, and their Faction, or necessitous Persons of prostituted Consciences, will carry their Votes; for they can afford to buy them at large rates, being resolved to repay themselves, though with the Ruine of the Nation.

This is no vain surmize or idle speculation, but the very truth of the Case; and the meanest Country-man that has Eyes in his Head, and will use them, cannot but see it: for did you ever know a Coach-man or Groom, for his place, unless he designed to rob his Master's Bird? Therefore whoever you put to charge in your Elections, blame him not, if he makes Money again of what he bought, and lays out his Vote in the House, not for your good, and that of the publick, but that way as will best please the Ministers of State, that so he himself may get a good Place, or Preferment, or Title of Honour by the Bargain. I say though he himself be a base Wretch for so doing, yet you cannot blame him, since you did not lend him your Trust, but sold it him, and what a Man hath purchased with his own Money, he may lawfully sell again.

Therefore that Man who does wilfully give his Voice for a Knave or Fool, does his endeavour to ruine both his Country and himself and his Posterity, and to be as bad or worse than the Person he chooses; and if the greater part of the House happen to be Wiser or Honester, it is no thanks to him; he did as much as he could to debauch it; and therefore for his part, if none else were concerned with him, it were no matter if he were forthwith made a Slave, and his Children perpetual Vassals.

The before mentioned old Lord Treasurer *Burleigh* (who is thought to have been the greatest Statesman that ever this Nation bred) did frequently deliver as a Maxim, or rather as a Prophecy, That England can hardly be ruined, unless it be by her own Parliaments; undoubtedly foreseeing that other oppressions, as being wrought by violence, might perhaps by violence be in time shaken off again; whereas when in a Parliamentary way we are undone by a Law, that can never be revert but by a down-right Rebellion, because the Parties advantag'd by that Law, will never agree to the repealing of it; and a Rebellion is both so dangerous, and of so black a Character, as Men either rich or conscientious, will not engage therein; and therefore no publick mischief is so irrecoverable as that which is grown into a Law, and nothing, you know, can become so, but what is imposed upon you by Parliament. Such is the happy Frame of your Government, so prudently and so strongly have your Ancestors secured Property and Liberty (rescued by inches out of the Hands of encroaching violence) that you cannot be enslaved but with Chains of your own making, for as you are never undone till you are undone by Law, so you can never be undone by a Law, till you chuse the undoing Legislators; and may not your Enemies add Scorn to their Cruelty, and pretend Justice for both, when they can plead they had never trampled on your heads, had not you laid them on the Ground?

From what has been said, it evidently appears of what vast importance it is at all times, when ever his Majesty shall be pleas'd to issue out his Writs for a Parliament, to chuse (as much as in us lies) a good House of Commons, as we tender our Religion, Liberties, Estates and Posterity; upon our well or ill chusing depends our well or ill-being; 'tis here as in Marriage or War, there is no room for second Errors, one Act may ruine a Nation beyond retrieve.



Besides, they whom you chuse will represent the Qualities as well as the Persons, and if you send up a false Glass, it will represent you with an ugly face; you have hitherto had the Repute of an antient and grave People, but if you chuse raw Saplings, green Heads, unexperienced Children, the World will Judge of you, as they once did of the Gracians, that you were either always Children, or are grown twice so; you have long been a famous Religious Protestant Nation, but if you chuse debauched swearing Atheists, Men of no Religion, or such as are meer formalists, or enclinable to Popery, what can the World think but that the Nation has lost its sense of Religion, and is content to be led back into the Egyptian darkness of Romish Fopperies: you have formerly had the Character of a sober and temperate Nation, but if you chuse Drunkards for your Trustees, or give your Voices for those that gorge you most with Liquor, what can be supposed but that you are already drunk with Folly, and just reeling into Slavery?

*The Statute Anno 8. Hen. 6. Cap. 7.*

*What sort of Men shall be Chusers, and who shall be chosen Knights of the Parliament.*

“Item, whereas the Elections of Knights of Shires to  
 “come to the Parliaments of our Lord the King, in  
 “many Counties of the Realm of *England*, have now of  
 “late been made by very great, outrageous and excessive  
 “Numbers of People, dwelling within the same Counties  
 “of the Realm of *England*, of the which most part  
 “was of People of *small Substance*, and of no value,  
 “whereof every one of them pretended a Voice, equiva-  
 “lent, as to such Elections to be made, with the most  
 “worthy Knights and Esquires, dwelling within the same  
 “Counties, where by Man-slaughter, Riots, Batteries, and  
 “Divisions among the Gentlemen, and other People of  
 “the

the same Counties shall very likely rise and be, unless  
 convenient and due remedy be provided in this behalf:  
 (2.) Our Lord the King considering the Premises,  
 hath provided, ordained and established by Authority  
 of this present Parliament, that the *Knights* of the  
 Shires to be chosen within the said Realm of *England*,  
 to come to the Parliament of our Lord the King here-  
 after to be holden, shall be chosen in every County of  
 the Realm of *England*, by People dwelling and resident  
 in the same Counties, whereof every one of them shall  
 have Land or Tenement, to the value of *Forty Shillings*  
*by the Year*, at the least, above all charges. (3.) And  
 that they which shall be so chosen shall be dwelling and  
 resident within the same Counties: (4.) And such as  
 have the greatest Number of them that may expend  
 forty Shillings by the Year and above, as afore is said,  
 shall be returned by the Sheriffs of every County,  
 Knights for Parliament, by Indentures sealed betwixt  
 the said Sheriffs and the said Chusers so to be made:  
 (5.) And every Sheriff of the Realm of *England*, shall  
 have Power by the said Authority to examine upon the  
 Evangelists every such Chuser, how much he may ex-  
 pend by the Year: (6.) And if any Sheriff returned  
 Knights to come to the Parliament, contrary to the  
 said Ordinance, the Justices of Assizes in their Sessions  
 of Assizes shall have Power by the Authority aforesaid  
 therefore to enquire. (7.) And if by inquest the same  
 be found before the Justices and the Sheriff thereof be  
 duly attainted, that then the said Sheriff shall incur  
 the pain of an Hundred Pounds to be paid to our Lord  
 the King, and also that he have Imprisonment by a  
 Year, without being let to mainprise or bail. (8.) And  
 that the Knights for the Parliament returned contrary  
 to the said Ordinance shall lose their Wages.  
 Provided always, that he which cannot expend Forty  
 Shillings by the Year, as aforesaid, shall in no wise be  
 Chuser of the Knights for the Parliament: (2.) And  
 that in every Writ that shall hereafter go forth to the  
 Sheriffs

" Sheriffs to chuse Knights for the Parliament, mention  
" be made of the said Ordinances.

• Note.

*Though this Statute make the Penalty on a Sheriff but  
100 l. for a false Return, yet the House may further punish  
him by Imprisonment, &c. at their pleasure, by the Law and  
Custom of Parliaments.*

*We shall now proceed to certain excellent Laws of a latter  
Date, made for the Explanation and Conservation of our  
Liberties; and in the first place present you with that  
excellent Petition of Right, granted by King Charles the  
First.*

*Anno Regni Caroli Regis Tertio.*

*The PETITION exhibited to his Majesty by the Lords  
Spiritual and Temporal and Commons in this present Parlia-  
ment assembled, concerning divers Rights and Liberties of  
the Subjects.*

*To the Kings most excellent Majesty.*

**H**umbly shew unto our Sovereign Lord the King,  
the Lords Spiritual and Temporal and Commons  
in Parliament assembled, That whereas it is declared and  
enacted by a Statute made in the time of the Reign of  
King Edward the First, commonly called *Statutum de Tali-  
agio non Concedendo*, that no Tallage or Aid shall be laid  
or levied by the King or his Heirs in this Realm, without  
the good Will and Assent of the Arch-bishops, Bishops,  
Earls, Barons, Knights, Burgeses, and other the Free-  
men of the Commonalty of this Realm; (2.) And by  
Authority of Parliament holden in the Five and Twenti-  
eth Year of the Reign of King Edward the Third, it is  
declared and enacted, that from thenceforth no Person  
should

should be compelled to make any *Loans* to the King against his will, because such Loans were against Reason and the *Franchise of the Land*; (3.) And by other Law of the Realm, it is provided, that none should be charged by any Charges or Imposition called a Benevolence, nor by such like charge; (4.) By which the Statute before mentioned, and other the good Laws and Statutes of this Realm, your Subjects have *inherited this Freedom*, that they should not be compelled to contribute to any Tax, Tallage, Aid, or other like Charge, *not set by common consent in Parliament*.

2. Yet nevertheless of late divers Commissions directed to sundry Commissioners in several Counties, with Instructions, have issued, by means whereof your People have been in divers places Assembled and required to lend certain Sums of Money unto your Majesty, and many of them, upon their refusal so to do, have had an Oath administered unto them not warrantable by the Laws or Statutes of this Realm, and have been Constrained to become bound to make Appearance and Attendance before your Privy-Council, and in other places, and others of them have been therefore Imprisoned, Confined and sundry others were molested and disquieted (2) and divers other Charges have been laid and levied upon your People in several Counties by Lord Lieutenants and Deputy Lieutenants, Commissioners for Mustres, Justices of Peace, and others, by Command or direction from your Majesty to your Privy-Council, against the Law and free Customs of this Realm.

3. And where also by the Statute called the great *Charter of the Liberties of England*, It is declared and enacted, that no Freeman may be taken or imprisoned, or be disseised of his Freehold or Liberties, or of his free Customs, or be out-lawed or exiled, nor in any manner destroyed, but by the lawful Judgment of his Peers, or by the Law of the Land.

4. And

4. And in the Eight and Twentieth Year of the Reign of King Edward the Third, it was declared and enacted by Authority of Parliament, that no Man of what Estate or Condition that he be, should be put out of his Land or Tenements, nor taken, nor Imprisoned, nor disherited, nor put to death, without being brought to answer, by due process of Law.

5. Nevertheless, against the Tenor of the said Statutes, and other the good Laws and Statutes of your Realm to that end provided, diverse of your Subjects of late have been Imprisoned without any cause shewed; (2) and when for their deliverance they were brought before Justices by your Majesty's Writs of *Habeas Corpus*, there to undergo and receive as the Court should order, and their Keepers commanded to certify the Causes of their Detainor, no cause was certified, but that they were detained by your Majesty's special command, signified by the Lords of your Privy-Council, and yet were returned back to several Prisons without being charged with any thing, to which they might make Answer according to the Law.

6. Whereas of late great Companies of Souldiers and Mariners have been dispersed into divers Counties of the Realm, and the Inhabitants against their Wills, have been compelled to receive them into their Houses, and then to suffer them to sojourn against the Laws and Customs of this Realm, and to the great grievance and vexation of the People.

7. And whereas also by Authority of Parliament, and in the Five and Twentieth Year of the Reign of King Edward the Third, it is declared and enacted, that no Man shall be forejudged of Life and Limb against the Form of the great Charter and Law of the Land; (2) and by the said great Charter and other the Laws and Statutes of this your Realm, no Man ought to be Judged to Death, but by the Laws Established in this your Realm, either by the Customs of the Realm, or by Acts of Parliament; (3) And whereas no Offender of what  
king

kind soever, is exempted from the Proceedings to be used, and punishments to be inflicted by the Laws and Statutes of this your Realm; nevertheless, of late divers Commissions under your Majesty's great Seal have issued forth, by which certain Persons have been Assigned and Appointed Commissioners, with Power and Authority to proceed within the Land, according to the Justice of *Martial-Law*, against such Souldiers and Mariners, or other dissolute Persons joyning with them, as should commit any Murther, Robbery, Felony, Mutiny, or other Outrage or Misdemeanor whatsoever, and by such summary Course and Order as is agreeable to Martial Law, and as is used in Armies in time of War, to proceed to the Tryal and Condemnation of such Offenders, and them to cause to be executed and put to death according to the Law-Martial.

8. By Pretext whereof some of your Majesty's Subjects have been by some of the said Commissioners put to death, when and where, if by the Laws and Statutes of the Land they have deserved death, by the same Laws and Statutes also they might, and by no other ought to have been Judged and Executed..

9. And also sundry grievous Offenders, by colour thereof, claiming an exemption, have escaped the punishments due to them by the Laws and Statute of this your Realm, by reason that divers of your Officers and Ministers of Justice, have unjustly refused or forbore to proceed against such Offenders according to the same Laws and Statutes, upon pretence that the said Offenders were punishable *only by Martial Law*, and by Authority of such Commission as aforesaid; (2) which Commissions, and all other of like nature, are wholly and directly contrary to the said Laws and Statutes of this your Realm.

10. They do therefore humbly pray your most Excellent Majesty, that no Man hereafter be compelled to make or yield any Gift, Loan, Benevolence, Tax, or such like Charge, without common Consent by Act of Parliament;



to, be ment; (2) and that none be called to make answer, or  
 vs and take such Oath, or to give Attendance, or be confined,  
 diver or otherwise molested or disquieted concerning the same,  
 ve If or for refusal thereof; (3) and that no Freeman in any  
 signed such manner as is before mentioned, be imprisoned or  
 Autho detained; (4) and that your Majesty would be pleased  
 Justice to remove the said Souldiers and Mariners, and that your  
 rs, or People may not be so burthened in time to come; (5) and  
 should that the foresaid Commissions for proceeding by Martial  
 or o Law, may be revoked and annulled; and that hereafter no  
 such Commissions of like nature may Issue forth to any Person  
 artial or Persons whatsoever to be executed as aforesaid, lest  
 pro by colour of them, any of your Majesty's Subjects be de-  
 rders, stroyed, or put to death contrary to the Laws and Fran-  
 h ac chise of the Land.

11. All which they most humbly pray of your most  
 Sub- Excellent Majesty, as their Right and Liberties, according  
 put to the Laws and Statutes of this Realm, and that your  
 utes Majesty would also vouchsafe to declare, that the awards,  
 laws doings and proceedings to the prejudice of your People,  
 ght in any of the premises, shall not be drawn hereafter in-  
 our to Consequence or Example; (2) and that your Majesty  
 11th would be also graciously pleased for the further Comfort  
 our and Safety of your People, to declare your Royal Will  
 Mi- and Pleasure, that in the things aforesaid, all your Of-  
 to ficers and Ministers shall serve you according to the Laws  
 me and Statutes of this Realm, as they tender the Honour  
 en- of your Majesty and the Prosperity of this King-  
 u- dom.

Which Petition being Read, the Second of June, 1623.  
 the King's answer was thus delivered unto it.

*The King willeth, that right be done, according to the  
 Laws and Customs of the Realm, and that the Statutes be  
 put in due Execution, that his Subjects may have no Cause to  
 complain of any wrong, or oppressions, contrary to their just  
 Rights and Liberties: To the Preservation whereof, he holds  
 himself in Conscience as well obliged, as of his Preroga-  
 tive.*

But

But this answer not giving satisfaction, the King was again Petitioned unto, that he would give a full and satisfactory answer to their Petition in full Parliament—Whereupon the King in Person, upon the Seventh of June, made this second answer,

*My Lords and Gentlemen,*

*The Answer I have already given you, was made with so good Deliberation, and approved by the Judgment of so many Wise Men, that I could not have imagined, but that it should have given you full satisfaction; but to avoid all ambiguous Interpretations, and to shew you that there is no doubleness in my meaning, I am willing to please you in words, as well as in substance; read your Petition, and you shall have an answer that I am sure will please you.*

And then causing the Petition to be read distinctly by the Clerk of the Crown, the Clerk of the Parliament read the King's Answer thereto in these words, *Soit Droit Fait, Come est desire, which is, Let Right be done as it desired.*

This answer, and the manner of confirming this Law, I have the rather recited, because the King's Answer and Circumstances relating thereunto, are wholly left out in our last Printed Book of Statutes.

The Petition it self is so plain that there needs no Comment thereon, only the Reader may observe that the things therein mentioned were the ancient Rights of the People, and therefore they expressly demand them of the King, *as their Rights and Liberties.*

In the next Place we shall add, the late Excellent *Habeas Corpus Act*, because relating to the same Subject, *viz.* The freeing of the Subject from causeless, tedious, and Arbitrary Imprisonments.

*Anno Tricesimo primo Caroli Secundi Regis.*

C H A P. II.

*An Act for the better securing the Liberty of the Subject, and for prevention of Imprisonments beyond Seas.*

*Commonly called the Habeas Corpus Act.*

I. **W**HEREAS great delays have been used by Sheriffs, Goalers, and other Officers, to whose Custody any of the King's Subjects have been committed for Criminal, or supposed Criminal matters, in making Returns of Writs of *Habeas Corpus* to them directed, by standing out an *Alias* and *Pluries*, *Habeas Corpus*, and sometimes more, and by other shifts, to avoid their yielding Obedience to such Writs, contrary to their duty, and the known Laws of the Land, whereby many of the King's Subjects have been, and hereafter may be long detained in prison, in such Cases where by Law they are Bailable, to their great Charges and Vexation.

II. For the Prevention whereof, and the more speedy Relief of all Persons Imprisoned for any such Criminal or supposed Criminal matters. (2) Be it Enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament Assembled, and by the Authority thereof, That whensoever any Person or Persons shall bring any *Habeas Corpus* directed unto any Sheriff or Sheriffs, Goaler, Minister, or other Person whatsoever, for any Person in his, or their Custody, and the said Writ shall be served upon the said Officer, or left at the Goal or Prison with any of the under Officers, under Keepers, or Deputy of the said Officers or Keepers, that the said Officer or Officers his or their under Officers or Keepers or Deputies shall within three days

days after the Service thereof, as aforesaid (unless the Commitment aforesaid were for Treason or Felony plainly and specially expressed in the Warrant of Commitment) upon payment or tender of the Charges of bringing the said Prisoner to be Ascertained by the Judges or Court that awarded the same, and Endorsed upon the said Writ, not exceeding twelve pence per Mile, and upon security given by his own Bond to pay the Charges of carrying back the Prisoner, if he shall be demanded, by the Court or Judge, to which he shall be brought according to the true intent of this present Act, and that he will not make any Escape by the Way, make Return of such Writ. (3) And bring or cause to be brought the Body, of the Party so committed or restrained, unto, or before, the Lord Chancellor, or Lord Keeper of the Great Seal of *England* for the time being, or the Judges or Barons of the said Court, from whence the said Writ shall issue, or unto and before such other Person or Persons, before whom the said Writ is made returnable, according to the Command thereof. (4) And shall then likewise certify the true Causes of his Detainer, or Imprisonment, unless the Commitment of the said Party be in any place beyond the distance of Twenty Miles from the place or places, where such Court or Person is or shall be residing; and if beyond the distance of twenty Miles, and not above one hundred Miles, than within the space of twenty Days after such the Delivery aforesaid, and not longer.

III. And to the Intent that no Sheriff, Goaler, or other Officer may pretend ignorance of the import of any such Writ. (2) Be it enacted by the Authority aforesaid, That all such Writs shall be marked in this manner, *Per Statutum Tricesimo primo Caroli Secundi Regis*, and shall be signed by the Person that awards the same. (3) And if any Person or Persons shall be, or stand committed or detained as aforesaid, for any Crime, unless, for Felony or Treason, plainly expressed in the Warrant of Commitment, in the Vacation time, and out of Term, it shall

shall and may be lawful to, and for the Person or Persons so committed or detained (other than Persons Convict, or in Execution) by Legal Process, or any one on his or their behalf, to Appeal, or complain to the Lord Chancellor, or Lord Keeper, or any one of His Majesty's Justices either of the one Bench, or of the other, or the Barons of the Exchequer of the Degree of the Coif.

(3) And the said Lord Chancellor, Lord Keeper, Justice or Barons, or any of them, upon view of the Copy or Copies of the Warrant or Warrants of Commitment and Detainer, or otherwise upon Oath made, that such Copy or Copies were denied to be given by such Person or Persons, or any on his, her, or their behalf attested and subscribed by two Witnesses, who were present at the Delivery of the same, to award and grant an *Habeas Corpus* under the Seal of such Court whereof he shall then be one of the Judges. (4) To be directed to the Officer or Officers in whose Custody the Party is committed or detained, shall be returnable immediately before the said Lord Chancellor or Lord Keeper, or such Justice, Baron, or any other Justice or Baron of the Degree of the Coif of any of the said Courts. (5) And upon Service thereof as aforesaid, the Officer or Officers, his or their under Officer or under Officers, under Keeper or under Keepers, or Deputy to whose Custody the Party is so committed or detained, shall within the times respectively before limited, bring such Prisoner or Prisoners before the said Lord Chancellor or Lord Keeper, or such Justices, Barons, or one of them, before whom the said Writ is made Returnable, and in Case of his Absence, before any other of them, with the Return of such Writ, and the true Causes of the Commitment, and Detainer. (6) And thereupon within two days after the Party shall be brought before them, the said Lord Chancellor or Lord Keeper or such Justice or Baron before whom the Prisoner shall be brought as aforesaid, shall discharge the said Prisoner from his Imprisonment, taking his or their Recognizance, with one or more surety.

furety or Sureties in any Sum, according to their discretion, having regard to the Quality of the Prisoner, and Nature of the Offence, for his or their appearance in the Court of *King's Bench*, the Term following, or at the next Assizes, Sessions, or General Goal-delivery of, and for such County, City or Place, where the Commitment was, or where the Offence was Committed, or in such other Court where the said Offence is properly Recognizable, as the Case shall require, and then shall Certifie the said Writ with the Return thereof, and the said Recognizance or Recognizances into the said Court, where such appearance is to be made. (6) Unless it shall appear unto the said Lord Chancellor, or Lord Keeper, or Justice or Justices, Baron or Barons, that the Party so committed is detained upon a Legal Process, Order, or Warrant out of some Court that hath Jurisdiction of Criminal Matters, or by some Warrant Signed and Sealed with the Hand and Seal of any of the said Justices or Barons, or some Justice or Justices of the Peace, for such Matters or Offences for the which by the Law the Prisoner is not Bailable.

IV. Provided always, and be it Enacted, That if any Person shall have wilfully neglected by the space of two whole Terms after his Imprisonment, to pray a *Habeas Corpus* for his Enlargement, such Person so wilfully neglecting, shall not have any *Habeas Corpus* to be granted in Vacation time in pursuance of this Act.

V. Be it further enacted by the Authority aforesaid, That if any Officer or Officers, his or their under-Officer, under Officers, Under-keeper or under-Keepers, or Deputy, shall neglect or refuse to make the Returns aforesaid, or to bring the Body or Bodies of the Prisoner or Prisoners according to the Command of the said Writ, within the respective times aforesaid, or upon demand made by the Prisoner, or Person in his Behalf; shall refuse to deliver, or within the space of six hours after demand, shall not deliver to the Person so demanding, a true Copy of the Warrant or Warrants of Commitment and detainage of such Prisoners.



Prisoner, which he or they are hereby required to deliver accordingly, all and every the Head Goalers and Keepers of such Prisons and such other Person, in whose Custody the Prisoner shall be detained, shall for the first Offence forfeit to the Prisoner or Party grieved, the Sum of one hundred pounds; (2) and for the second Offence the Sum of two hundred pounds, and shall and is hereby made incapable to hold or execute his said Office; (3) the said Penalties to be recovered by the Prisoner or Party grieved, his Executors or Administrators, against such Offenders, his Executors or Administrators, by any Action of Debt, Suit, Bill, plaint or Information, in any of the King's Courts at *Westminster*, wherein no *Essoign*, Protection, privilege Injunction, Wager of Law, or stay of Prosecution by *Non vult ulterius prosequi*, or otherwise, shall be admitted or allowed, or any more than one Impar lance. (4) And any Recovery or Judgment at the Suit of any Party grieved, shall be a sufficient Conviction for the first Offence; and any after Recovery or Judgment at the Suit of a Party grieved for any Offence after the first Judgment, shall be a sufficient Conviction to bring the Officers or Person within the said Penalty for the second Offence.

6. And for the Prevention of unjust vexation by reiterated Commitments for the same; (1) Be it enacted by the Authority aforesaid, That no Person or Persons which shall be delivered or set at large upon any *Habeas Corpus*, shall at any time hereafter be again Imprisoned or Committed for the same Offence, by any Person or Persons whatsoever, other than by the Legal Order and process of such Court wherein he or they shall be bound by Recognizance to appear, or other Court having Jurisdiction of the Cause; (3) And if any other Person or Persons shall knowingly contrary to this Act Recommit, or Imprison, or knowingly procure or cause to be Recommitted or Imprisoned for the same Offence or pretended Offence, any Person or Persons delivered or set at Large as aforesaid, or be knowingly Aiding

Assisting

Assisting therein, then he or they shall forfeit to the Prisoner or Party grieved, the Sum of five hundred pounds, any colourable pretence or variation in the Warrant or Warrants of Commitment notwithstanding, to be recovered as aforesaid.

7. Provided always, and be it further enacted, That if any Person or Persons shall be committed for High-Treason or Felony, plainly and specially expressed in the Warrant of Commitment, upon his Petition in open Court the first Week of the Term, or first Day of the Sessions of *Oyer and Terminer* or General Gaol-delivery, to be brought to his Tryal, shall not be indicted sometime in the next Term, Sessions of *Oyer and Terminer*, or General Gaol-delivery after such Commitment. It shall and may be lawful to and for the Judges of the Court of *King's-Bench*, and Justices of *Oyer and Terminer*, or General Gaol-delivery, and they are hereby required upon motion to them made in open Court the last Day of the Term, Sessions, or Gaol delivery, either by the Prisoner, or any one in his behalf, to set at Liberty the Prisoner upon Bail, unless it appear to the Judges and Justices upon Oath made, that the Witnesses for the King could not be produced the same Term, Sessions or General Gaol-delivery; (2) And if any Person or Persons committed as aforesaid, upon his Prayer or Petition in open Court, the first Week of the Term, or first Day of the Sessions of *Oyer and Terminer*, and General Gaol-delivery, to be brought to his Tryal, shall not be Indicted and Tryed the second Term, Sessions of *Oyer and Terminer*, or General Gaol-delivery after his Commitment, or upon his Tryal shall be acquitted, he shall be discharged from his Imprisonment.

8. Provided always, That nothing in this Act shall extend to discharge out of Prison any Person charged in Debt, or other Action, or with process in any civil Cause, but that after he shall be discharged of his Imprisonment for such his Criminal Offence, he shall be kept

kept in Custody according to Law, for such other Suit.  
 9. Provided always, and be it Enacted by the Authority aforesaid, That if any Person or Persons, Subjects of this Realm, shall be Committed to any Prison, or in Custody of any Officer or Officers whatsoever, for any Criminal, or supposed Criminal Matter, That the said Person shall not be removed from the said Prison and Custody, into the Custody of any other Officer or Officers, (2) unless it be by *Habeas Corpus*, or some other Legal Writ; or where the Prisoner is delivered to the Constable or other Inferiour Officer to carry such Prisoner to some common Gaol; (3) or where any Person is sent by Order of any Judge of Assize, or Justice of the Peace to any common Work-house, or House of Correction; (4) or where the Prisoner is removed from one Prison or Place to another within the same County, in order to his or her Tryal or discharge in due Course of Law; (5) or in case of sudden Infection, or other Necessity; (6) And if any Person or Persons shall after such Commitment aforesaid, make out and sign, or Counter-sign any Warrant or Warrants for such removal aforesaid, contrary to this Act, as well he that makes or signs or Counter-signs such Warrant or Warrants as the Officer or Officers, that obey or execute the same, shall suffer, and incur the Pains, and Forfeitures in this Act before-mentioned, both for the First and second Offence respectively, to be recovered in manner aforesaid by the Party grieved.

10. Provided also, and be it further Enacted by the Authority aforesaid, That it shall and may be lawful to, and for any Prisoner and Prisoners as aforesaid, to move, and obtain his or their *Habeas Corpus*, as well out of the High Court of Chancery, or Court of Exchequer, as out of the Courts of *King's-Bench*, or *Common-Pleas*, or either of them; (2) and if the said Lord Chancellor, or Lord Keeper, or any Judge or Judges, Baron or Barons, or the time being, of the Degree of the *Cof* of any of the Courts aforesaid in the Vacation time, upon view

of the Copy or Copies of the Warrant or Warrants of Commitment or Detainer, or upon Oath made, that such Copy or Copies were denied as aforesaid, shall deny any writ of *Habeas Corpus* by this Act required to be granted, being moved for as aforesaid, they shall severally Forfeit to the Prisoner or Party grieved, the Sum of five hundred pounds, to be recovered in manner aforesaid.

11. And be it Enacted, and declared by the Authority aforesaid, That an *Habeas Corpus* according to the true Intent and Meaning of this Act, may be directed, and run into any County *Palatine*, the Cinque-ports or other Priviledge Places within the Kingdom of *England*, Dominion of *Wales*, or Town of *Berwick upon Tweed*, and the Isles of *Fersey*, or *Guernsey*; any Law or Usage to the Contrary notwithstanding.

12. And for preventing *Illegal* Imprisonments in Prisons beyond-Seas; (2) be it further Enacted by the Authority aforesaid, That no Subject of this Realm that now is, or hereafter shall be an Inhabitant or Resident of this Kingdom of *England*, Dominion of *Wales*, or Town of *Berwick upon Tweed*, shall or may be sent Prisoner into *Scotland*, *Ireland*, *Fersey*, *Guernsey*, *Tangier*, or into any Parts, Garrisons, Islands, or Places beyond the Seas, which are, or at any time hereafter, shall be within or without the Dominions of His Majesty, his Heirs or Successors, (3) and that every such Imprisonment is hereby Enacted and adjudged to be *Illegal*; (4) and that, if any of the said Subjects now is, or hereafter shall be so Imprisoned, every such Person and Persons so Imprisoned, shall and may for every such Imprisonment, maintain by vertue of this Act, an Action or Actions of false Imprisonment, in any of His Majesty's Courts of Record, against the Person or Persons by whom he or she be so Committed, Detained, Imprisoned, sent Prisoner, or Transported contrary to the true Meaning of this Act, and against all or any Person or Persons that shall frame, Contrive, Write, Seal, or Counterfeign any

any Warrant or Writing for such Commitment, Detainer, Imprisonment, or Transportation, or shall be Advising, Aiding or Assisting in the same, or any of them; (5) and the Plaintiff in every such Action shall have Judgment to recover his Treble Costs, besides Damages; which Damages so to be given, shall not be less than five hundred pounds; (6) in which Action no delay, stay or stop of Proceeding, by Rule, Order or Command, nor no Injunction, Potection or Priviledge whatsoever, nor any more than one Imparlance shall be allowed, excepting such Rule of the Court wherein the Action shall depend, made in open Court, as shall be thought in Justice necessary for special cause to be expressed in the said Rule; (7) and the Person or Persons who shall knowingly Frame, Contrive, Write, Seal or Counterfign any Warrant for such Commitment, Detainer or Transportation, or shall so Commit, Detain, Imprison, or Transport any Person or Persons contrary to this Act, or be any ways Advising, Aiding or Assisting therein, being lawfully Convicted thereof, shall be disabled from thenceforth to bear any Office of Trust or Profit within the said Realm of England, Dominion of Wales, or Town of *Berwick upon Tweed*, or any of the Islands, Territories or Dominions thereunto belonging. (8) And shall incur and sustain the Pains, Penalties and Forfeitures limited, ordained and provided in and by the Statute of Provision and Preamure, made in the Sixteenth Year of King *Richard the Second*. (9) And be incapable of any Pardon from the King, his Heirs or Successors, of the said Forfeitures, Losses or Disabilities, or any of them.

13. Provided always, That nothing in this Act extend to give Benefit to any Person who shall by Contract in Writing agree with any Merchant or Owner, of any Plantation, or other Person whatsoever, to be transported to any Parts beyond the Seas, and receive Earnest upon such Agreement, although that afterwards such Person shall renounce such Contract.

14. Provided always, and be it enacted, That if any Person or Persons lawfully Convicted of any Felony, shall in open Court pray to be Transported beyond the Seas, and the Court shall think fit to leave him or them in Prison, for that purpose such Person or Persons may be Transported into any Parts beyond the Seas; This Act or anything therein contained to the contrary notwithstanding.

15. Provided also, and be it Enacted, That nothing herein contained, shall be deemed, construed, or taken to extend to the Imprisonment of any Person before to the First Day of June, one thousand six hundred seventy and nine, or to any thing advised, procured or otherwise done, Relating to such Imprisonment; any thing herein contained to the contrary notwithstanding.

16. Provided also, That if any Person or Persons at any time resiant in this Realm, shall have committed any Capital Offence in *Scotland* or *Ireland*, or any of the Islands, or Foreign Plantations of the King, his Heirs or Successors, where he or she, ought to be Tryed for such Offence, such Person or Persons may be sent to such place there to receive such Tryal, in such manner as the same might have been used before the making of this Act; any thing herein contained to the contrary notwithstanding.

17. Provided always, and be it enacted, That no Person or Persons shall be sued, impleaded, molested or troubled for any Offence against this Act, unless the Party offending, be sued or impleaded for the same within two Years, at the most after such time wherein the Offence shall be committed in Case the Party grieved shall not be then in Prison, and if he shall be in Prison, then within the space of two Years after the Decease of the Person Imprisoned, or his or her delivery out of Prison, which shall first happen.

18. And to the Intent no Person may avoid his Tryal at the Assizes, or General Goal-delivery, by procuring his



his removal before the Assizes at such time as he cannot be brought back to receive his Tryal there; (2) be it enacted, That after the Assizes proclaimed for that County where the Prisoner is detained, no Person shall be removed from the common Goal upon any *Habeas Corpus*, granted in pursuance of this Act, but upon any such *Habeas Corpus*, shall be brought before the Judge of Assize in open Court, who is thereupon to do what to Justice shall appertain.

19. Provided nevertheless, That after the Assizes are ended, any Person or Persons detained, may have his or her *Habeas Corpus* according to the Direction and Intention of this Act.

20. And be it also enacted by the Authority aforesaid: That if any Information, Suit or Action shall be brought or exhibited against any Person or Persons for any Offence committed, or to be committed against the Force of this Law, it shall be lawful for such Defendants to plead the General Issue, that they are not Guilty, or that they own nothing, and to give such special matter in Evidence to the Jury that shall Try the same, which matter being pleaded, had been good and sufficient in Law to have discharged the said Defendant or Defendants against the said Information, Suit or Action, and the said matter shall be then as available to him or them, to all intents and purposes, as if he or they had sufficiently pleaded, set forth or alledged the same Matter in Bar or Discharge of such Information, Suit or Action.

21. And because many times Persons charged with Petty Treason or Felony, or as Accessaries thereunto are committed upon suspicion only, whereupon they are Bailable or not, according as the Circumstances make out that suspicion are more or less weighty, which are best known to the Justices of the Peace that committed the Persons, and have the Examinations before them or other Justices of the Peace in the County (2) be it therefore enacted, That where any Person shall appear

be committed by any Judge, or Justice of the Peace, charged as Accessary before the Fact, to any Petty Treason or Felony, or upon suspicion thereof, or with suspicion of Petty Treason or Felony, which Petty Treason or Felony shall be plainly and specially expressed in the Warrant of Commitment, that such Person shall not be removed or Bailed by vertue of this Act, or in any other manner than they might have been before the making of this Act.

### *The Comments.*

There are three things, which the Law of England (which is a Law of Mercy) principally regards and taketh care of, viz. *Life, Liberty and Estate*. Next to Man's Life, the nearest thing that concerns him, is freedom of his person. For indeed what is Imprisonment, but a kind of *Civil Death*? Therefore saith Fortescue Cap. 42. *Anglia Fur in omni Casu Libertatis dant favorem*. The Laws of England do in ALL CASES favour Liberty.

Touching Commitments, and what is required to make a *Legal Minimus*, see Before Page. 27.

The Writ of *Habeas Corpus* is a Remedy given by the common Law for such as were unjustly detained in custody, to procure their Liberty: But before this Statute was rendered far less useful than it ought to be, partly by the Judges, pretending a Power to Grant, or deny the said Writ at their pleasure, in many Cases, and especially by the ill Practises of Sheriffs and Goalers, by putting the Prisoner to the charge and trouble of an *Alias* and *pluries* (that is a second and third Writ, before they would obey the first, for there was no penalty till the third) and then at last the Judges would oft-times allow, That they could not take Bail, because the Party was a *Prisoner of State*, &c. Therefore to Remedy all those Michiefs; This most wholesome Law was provided.

Which

Which we shall briefly endeavour to divide into several Branches, and explain it to the meanest Capacities, since no Man is sure but one time or other, he may have occasion to make use of it.

This Act concerneth either first, Persons committed for some other Criminal, or supposed Criminal, besides *Treason* or *Felony*, and these are to have an *Habeas Corpus* immediately; 2<sup>ly</sup>. such who in their *Minimus* are charged with *Treason* or *Felony*, and these shall have the Benefit of the said Writ after the time here in Limited. 1<sup>st</sup>. If any Goaler or under keeper shall not deliver a *true Copy* of the *Minimus* within 6 hours after the Prisoner demand it, the head Goaler or Keeper forfeits to the Prisoner for the first Offence 100 *l*. for the second Offence 200 *l*. and loses his place, nor is there any Fee to be paid for the same, the Turn-key must deliver it at his peril. And note if the Prisoner should be lockt up or none suffered to come at him, any friend of his may demand the same on his behalf.

2. Whatever the Criminal matter be, If *Treason* or *Felony* be not expressly charged any Person on the Prisoners behalf, carrying such *true Copy* of the Commitment to the Lord Chancellor, or any one of the Judges or Barons of the Exchequer, or upon Oath made that Copy was demanded and denied, he shall grant an *Habeas Corpus*, or forfeit 500 *l*. to the Prisoner; but note the Request must be made to such Judge in *Writing*, and attested by two witnesses.

3. If the Sheriff or Goaler do not carry up the Prisoner, and Return the true Causes of his detainor, within three days, If under twenty Miles distance, or within ten days if above twenty and under an hundred Miles, or within twenty days if above an hundred Miles, he forfeits 500 *l*. to the Prisoner.

Note the Prisoner must pay the Charges of his coming up, and the Judge when he Grants the Writ, must order how much, but it must not be above 12 *d*. a Week.

If upon the Return of such *Habeas Corpus*, it appear the Prisoner is not charged with *Treason* or *Felony*, *pecially and plainly expressed*, or for such matters, as by Law are not *bailable*, the Judge shall discharge the Prisoner upon Bail.

If a Person once so Bailed out, shall again be Imprisoned for the same Offence, those that do it forfeit 500 l.

5. If there be High *Treason* or *Felony plainly and specially expressed* (That is not only generally, for *Treason* or *Felony*, but *Treason* in conspiring to kill the King, or in *Counterfeiting the King's Coin*, or *Felony*, for *stealing the Goods* of such an one to such a value, &c.) Then the Prisoner cannot have his *Habeas Corpus*, till first he has on the first Week of the Term, or first Day of Sessions of *Oyer and Terminer*, or General Goal-delivery, Petitioned in open Court to be brought to his Tryal; and then if he be not brought to Tryal the next Term, or Sessions following, on the last day thereof, he shall be Bailed; and if not Indicted the second Term or Sessions, shall be discharged.

6. This Act extends to all places within *England* and *Wales*; the *Tower* cannot be supposed to be exempted, nor *Windſor-Caſtle*, nor any such Royal Forts; for the words are general: and besides, there is a special Act of Parliament, that unites the King's Castles to the Counties wherein they stand; there having been it seems some pretensions and ill practices to hold them distinct, that therein they might detain Men Prisoners against Law, and not admit any *Writ* to enlarge them. For Remedy whereof it was thus enacted;

Anno 13. *Riob. Secundi.*

Item. It is Ordained and Assented, that the King's Castles and Goals which were wont to be joyned to the Bodies of the Counties, and be now severed, shall be rejoynd to the same Counties.

Lastly,

Lastly, No Person shall be sent Prisoner out of *England* or *Wales*, into *Scotland*, *Ireland*, *Ferrey*, *Guernsey*, *Tangier*, or any other place beyond the seas.

The Proviso's and other Clauses of this Act may be easily apprehended by the meanest Capacities.

And, as the Law provides thus for our Liberty, so it takes care, that those that are in Custody, shall not be abused or oppressed; to which purpose I shall here insert so much as is material and necessary to be known by all Persons, who are so unhappy as to be Prisoners, out of the Statute of the 22d. and 23d. Car. 2. Cap. 23. The Words whereof are as follows.

WHEREAS Persons that are under Arrests, or committed to the Custody of Sheriffs, Bailiffs, Goalers, Keepers of Prisons or Goals, are much abused and wronged by extorting of great Fees, Rewards, and other Exactions, and put to great Expences under pretences of favour, or otherwise, whereby they are greatly oppressed, and many times ruined in their Estates. (2) For Remedy thereof, be it enacted by the Authority aforesaid, that if any under Sheriff, Bailiff, Serjeant at Mace, or other Officer or Ministers whatsoever, shall at any time or times hereafter have in his or their Custody, any Person or Persons by vertue or colour of any Writ, Process, or other Warrant whatsoever, it shall not be lawful for such Officer or Officers, to convey or carry, or cause to be conveyed or carried the said Person or Persons to any Tavern, Ale-House, or other Public Victualling, or Drinking-House, without the free and voluntary Consent of the said Person or Persons, so as to Charge such Prisoner with any Sum of Money for any Wine, Beer, Ale, Victuals, Tobacco, or any other things whatsoever, but what the said Person or Persons shall call for, of his her, or their own accord, (3) and shall not demand, take, or receive, or cause to be demanded, taken or received, directly or indirectly, any other, or greater Sum, or Sums than what by Law ought to be taken or demanded for such Arrest, taking, or waiting (until such Person

or Persons shall have procured an Appearance, found Bail, agreed with his or their Adversaries, or be sent to the proper Goal, belonging to the County, City, Town or Place where such Arrest or taking shall be,) (4) nor take and exact any other Reward or Gratuities for so keeping the said Person or Persons out of the Goal or Prison, than what he, she or they shall or will of his, her or their own accord, voluntarily and freely give. (5) Nor take, nor receive any other, or greater Sum or Sums for each Nights Lodging, or other Expences, than what is reasonable and fitting in such Cases, or shall be so adjudged by the next Justice of the Peace, or at the next Quarter-Sessions. (6) And shall not cause or procure the said Person or Persons, to pay for any other Wine, Beer, Ale, Victuals, Tobacco, or other things, than what the said Person or Persons shall voluntarily, freely, and particularly call for.

And that every under-Sheriff, Goaler, Keeper of Prison or Goal, and every Person or Person whatsoever, to whose Custody any Person or Persons shall be delivered or committed by vertue of any Writ of Process, or any pretence whatsoever, shall permit and suffer the said Person or Persons, at his and their Will and Pleasure, to send for, and have any Beer, Ale, Victuals, and other necessary Food, where, and from whence they please; and also to have and use such Bedding, Linnen, and other things, as the said Person or Persons shall think fit, without any purloining, detaining or paying for the same, or any part thereof; nor shall demand, take or receive of the said Person or Persons, any other or greater Fee or Fees whatsoever, for his, her, or their commitment, release or discharge; or for his, her, or their Chamber-Rent, than what is allowable by Law, until the same shall be settled by three Justices of the Peace, whereof one to be of the *Quorum*, of each particular County, City and Town Corporate, in their several Precincts, and for the City of London, and Counties of Middlesex and Surrey, the two Lord Chief Justices of the



## English Liberties.

the *King's Bench* and *Common-Pleas*, and the Lord Chief Baron, or any two of them, and the Justices of the Peace of the same, in their several Jurisdictions.

And likewise that the said Lord Chief Justice, Lord Chief Baron, and Justices of the Peace in their several Jurisdictions, and all Commissioners for Charitable Uses, do their best endeavours, and diligence to examine, and find out the several Legacies, Gifts and Bequests bestowed and given for the Benefit and Advantage of the Poor Prisoners for Debt, in the several Goals and Prisons in this Kingdom, and to send for any Deeds, Wills, Writings, and Books of Accompts whatsoever; and any Person or Persons concerned therein, and to examine them upon Oath, to make true discovery thereof (which they have full Power and Authority hereby to do) and the same so found out and ascertained, to order and settle in some Manner and Way, that the Prisoners hereafter may not be defrauded, but receive the full Benefit thereof, according to the true Intent of the Donors.

And that these Accompts of the several Legacies, Gifts and Bequests, given and bestowed upon the several Prisoners for Debt, within this Kingdom, and the several Rates of Fees, and the future Government of Prisons, be signed and confirmed by the Lord Chief Justices, and Lord Chief Baron, or any two of them for the time being, and the Justices of the Peace in *London*, *Middlesex* and *Surrey*, and by the Judges for the several *Circuit*s, and Justices of the Peace for the time being, in their several *Presals*, and fairly written and hung up in a Table in every Goal and Prison, before the first Day of *November*, 1671. and likewise be Registered by each, and every Clerk of the Peace within his or their particular Jurisdiction: and after such Establishment, no other or greater Fee or Fees than shall be so Established, shall be demanded or received.

And whereas it is become the common Practice of Goalers, and Keepers of *Newgate*, the *Gate-house* at *Westminster*, andundry other Goals and Prisons to

together in one Room, or Chamber and Bed, Prisoners for Debt and Felons, whereby many times honest Gentlemen, Trades-men and others, Prisoners for Debt, are disturbed and hindered in the Night-time from their natural Rest, by reason of their Fetters and Irons, and otherwise much offended and troubled by their lewd and prophane Language and Discourses, with most horrid Cursing and Swearing (much accustomed to such Persons;) (2.) be it enacted by the Authority aforesaid, That it shall not be lawful hereafter for any Sheriff, Goalor or Keeper of any Goal or Prison, to put, keep or lodge Prisoners for Debt, and Felons together in one Room or Chamber; but that they shall be put, kept and lodged separate and apart one from another, in distinct Rooms. (3.) Upon pain that he, she, or they which shall offend against this Act, or the true intent and meaning thereof, or any part thereof, shall forfeit and lose his or her Office, Place or Employment, and shall forfeit treble damages to the Party grieved, to be recovered by virtue of this Act, any Law, Statute, Usage or Custom to the contrary in any wise notwithstanding.

And to the end, that Englishmen may more intirely enjoy their due Freedoms, the Prudence of our Legislators have thought fit from time to time to remove Encroachments thereupon, though under pretence of Jurisdiction and Courts of Justice; and to prohibit any exorbitant arbitrary Power for the future, but that all things may be left to the calm and equal Proceedings of Law; and that most excellent Method of Tryal by *Juries*, one of the principal Bulwarks of *England's Liberties*. For an instance hereof, take the Act following.

*An Act for regulating of the Privy-Council, and for  
saking away the Court commonly called the  
Star-Chamber.*

**W**Heras by the great Charter many times confirmed in Parliament, it is enacted, That no Free-man shall be taken or imprisoned, or disseised of his Freehold or Liberties, or free Customs, or be Outlawed or Exiled, or otherwise destroyed; and that the King will not pass upon him, or condemn him, but by lawful Judgment of his Peers, or by the Law of the Land. (2.) And by another Statute made in the Fifth Year of the Reign of King *Edward*, it is enacted, That no Man shall be attached by any Accusation, nor fore-judged of Life or Limb, nor his Lands, Tenements, Goods nor Chattels seized into the King's Hands against the Form of the great Charter, and the Law of the Land: (3.) And by another Statute made in the five and twentieth Year of the Reign of the same King *Edward* the Third; it is accorded, assented and established, That none shall be taken by Petition, or Suggestion made to the King, or to his Council, unless it be by Indictment or Presentment of good and lawful People of the same Neighbourhood where such Deeds be done, in due manner, or by Process made by Writ original at the common Law; and that none be put out of his Franchise or Freehold, unless he be duly brought in to answer, and fore-judged of the same by the Course of the Law: And if any thing be done against the same, it shall be redressed, and holden for none. (4.) And by another Statute made in the eight and twentieth Year of the Reign of the same King *Edward* the Third, it is amongst other things enacted, That no Man of what Estate or Condition soever he be shall be put out of his Lands or Tenements, nor taken, nor imprisoned, nor disinherited, without being brought in to answer by due Process of Law: (5.) And by another

ther Statute made in the two and fortieth Year of the Reign of the said King *Edward the Third*, it is enacted, That no Man be put to answer without Presentment before Justices, or Matter of Record, or by due Process and Writ original, according to the old Law of the Land; and if any thing be done to the contrary, it shall be void in Law, and holden for Error: (6.) And by another Statute in the six and thirtieth Year of the Reign of the same King *Edward the Third*, it is amongst other things enacted. That all Pleas which shall be pleaded in any Courts before any of the King's Justices, or in his other places, or before any of his other Ministers, or in the Courts and Places of any other Lords within the Realm, shall be Entred and Enroll'd in *Latine*: (7.) And whereas by the Statute made in the Third Year of King *Henry the Seventh*, Power is given to the Chancellor, the Lord Treasurer of *England*, for the time being, and the Keeper of the King's Privy Seal, or two of them, calling unto them a Bishop, and a Temporal Lord of the King's most honourable Council, and the Two Chief Justices of the *King's Bench* and *Common-Pleas* for the time being, or other two Justices in their absence, to proceed as in that Act is expressed, for the Punishment of some particular Offences therein mentioned: (8.) And by the Statute made in the one and twentieth Year of King *Henry the Eighth*, the President of the Council is associated to joyn with the Lord Chancellor and other Judges in the said Statute of the Third of *Henry the Seventh* mentioned: (9.) But the said Judges have not kept themselves to the Points limited by the said Statute, but have undertaken to punish where no Law doth warrant, and to make decrees for things having no such Authority, and to inflict heavier Punishments than by any Law is warranted.

2. And forasmuch as all Matters examinable or determinable before the said Judges, or in the Court commonly called the *Star-Chamber*, may have their proper Remedy and Address, and their due Punishment and Correction by the common Law of the Land, and in the ordinary

ordinary Courſe of Juſtice elſewhere; (2.) And foras-  
 much as the Reaſons and Motives inducing the Erection  
 and Continuance of that Court do now ceaſe; (3.) And  
 the Proceedings, Cenſures and Decrees of that Court,  
 have by experience been found to be an intolerable Bur-  
 then to the Subject, and the means to introduce an Ar-  
 bitrary Power and Government: (4.) And forasmuch  
 as the Council Table hath of late times aſſumed unto it  
 ſelf a Power to intermeddle in Civil, and Matters only  
 of private Intereſt between Party and Party, and have  
 adventured to determine of the Eſtates and Liberties of  
 the Subject, contrary to the Law of the Land, and  
 the Rights and Priviledges of the Subject, by which  
 great and manifold miſchiefs and inconveniences have a-  
 riſen and happened, and much uncertainty by means of  
 ſuch Proceedings hath been conceived concerning Mens  
 Rights and Eſtates; for ſettling whereof, and prevent-  
 ing the like in time to come.

3. Be it ordained and enacted by the Authority of this  
 preſent Parliament, That the ſaid Court commonly called  
 the *Star-Chamber*, and all Jurisdiction, Power and Au-  
 thority belonging unto, or exerciſed in the ſame Court,  
 or by any the Judges, Officers or Miniſters thereof, be  
 from the firſt day of *Auguſt*, in the Year of our Lord  
 God, one thouſand ſix hundred forty and one, clearly  
 and abſolutely diſſolved, taken away and determined;  
 (2.) And that from the ſaid firſt day of *Auguſt*, neither  
 the Lord Chancellor or Keeper of the Great Seal of  
*England*, the Lord Treafurer of *England*, the Keeper of  
 the King's Privy Seal, or Preſident of the Council, nor any  
 Biſhop, Temporal Lord Privy Councellor, or Judge or  
 Juſtice whatſoever, ſhall have any Power or Authority to  
 hear, examine or determine any matter or thing what-  
 ſoever in the ſaid Court commonly called the *Star Cham-*  
*ber*, or to make, pronounce or deliver any Judgment,  
 Sentence, Order or Decree; or to do any Judicial  
 or Miniſterial Act in the ſaid Court: (3.) And that all  
 and every Act and Acts of Parliament, and all and every

Article, Cause, and Sentence in them, and every of them, by which any Jurisdiction, Power or Authority is given, limited or appointed, in the said Court commonly called the Star-Chamber, or unto all, or any the Judges, Officers or Ministers thereof, or for any Proceedings to be had or made in the said Court, or for any matter or thing to be drawn into question, examined or determined there, shall for so much as concerneth the said Court of Star-Chamber, and the Power and Authority thereby given unto it, be from the said first day of August repealed and absolutely revoked and made void.

4. And be it likewise enacted, That the like Jurisdiction now used and exercised in the Court before the President and Council in the *Marches of Wales*; (2.) And also in the Court before the President and Council established in the Northern parts; (3.) And also in the Court commonly called, the Court of the Dutchy of *Lancaster*, held before the Chancellor and Council of that Court; (4.) And also in the Court of *Exchequer* of the Countie Palatine of *Chester*, held before the Chamberlain, and Council of that Court; (5.) The like Jurisdiction being exercised there, shall from the said first day of August, one thousand six hundred, forty and one, be also repealed and absolutely revoked and made void, any Law, Prescription, Custom or Usage, or the said Statute made in the third Year of King *Henry* the Seventh, or the Statute made the one and twentieth of *Henry* the Eighth, or any Act or Acts of Parliament heretofore had or made, to the contrary thereof in any wise notwithstanding: (6.) And that from henceforth no Court, Council, or Place of Judicature shall be erected, ordained, constituted and appointed within this Realm of *England*, or Dominion of *Wales*, which shall have, use or exercise the same or the like Jurisdiction, as is or hath been used, practised or exercised in the said Court of Star-Chamber.

Be it likewise declared and enacted by Authority of this present Parliament, That neither his Majesty, nor his



his Privy Council, have or ought to have any Jurisdiction, Power or Authority by *English* Bill, Petition, Articles, Libel, or any other Arbitrary way whatsoever, to examine or draw into question, determine or dispose of the Lands, Tenements, Hereditaments, Goods, or Chattels of any of the Subjects of this Kingdom; but that the same ought to be tryed and determined in the ordinary Courts of Justice, and by the ordinary course of the Law.

6. And be it further provided and enacted, That if any Lord Chancellor, or Keeper of the great Seal of *England*, Lord Treasurer, Keeper of the King's Privy Seal, President of the Council, Bishop, Temporal Lord, Privy Counsellor, Judge or Justice whatsoever, shall offend, or do any thing contrary to the purport, true intent and meaning of this Law, Then he or they shall for such Offence forfeit the Sum of five hundred Pounds of lawful Money of *England*, unto any party grieved, his Executors or Administrators, who shall really prosecute for the same and first obtain Judgment thereupon, to be recovered in any Court of Record at *Westminster*, by Action of Debt, Bill, Plaint, or Information wherein no Essoign, Protection, Wager of Law, Aid-prayer, Privilege, Injunction or Order of Restraint, shall be in any wise prayed, granted or allowed; nor any more than one Imparlane: (2.) And if any Person, against whom any such Judgment or Recovery shall be had as aforesaid, shall after such Judgment or Recovery, offend again in the same, then he or they for such offence shall forfeit the Sum of one thousand Pounds of lawful Money of *England*, unto any party grieved, his Executors or Administrators, who shall really prosecute for the same, and first obtain Judgment thereupon, to be recovered in any Court of Record at *Westminster*, by Action of Debt, Bill, Plaint or Information, in which no Essoign, Protection, Wager of Law, Aid-prayer, Privilege, Injunction or Order of Restraint, shall be in any wise prayed, granted or allowed; nor any more than one Imparlane: (3.) And if any Person against whom any such second Judgment

or Recovery shall be had as aforesaid. shall after such Judgment or Recovery, offend again in the same kind, and shall be thereof duly convicted by Indictment, Information, or any other lawful way or means, that such Person so convicted, shall be from thenceforth disabled, and become by virtue of this Act incapable, *ipso facto*, to bear his and their said Office and Offices respectively: (4.) And shall be likewise disabled to make any Gift, Grant, Conveyance, or other Disposition of any of his Lands, Tenements, Hereditaments, Goods or Chattels; or to take any benefit of any Gift, Conveyance or Legacy to his own use.

7. And every Person so offending shall likewise forfeit and lose to the Party grieved, by any thing done contrary to the true intent and meaning of this Law, his treble Damages, which he shall sustain and be put unto, by means or occasion of any such act or thing done, the same to be recovered in any of his Majesties Courts of Record at *Westminster*, by Action of Debt, Bill, Plaint, or Information, wherein no Essoign, Protection, Wager of Law, Aid-prayer, Priviledge, Injunction, or Order of Restraint, shall be in any wise prayed, granted or allowed, nor any more than one Imparlance.

8. And be it also provided and enacted, That if any Person shall hereafter be committed, restrained of his Liberty, or suffer Imprisonment, by the Order or Decree of any such Court of Star-Chamber, or other Court aforesaid, now, or at any time hereafter, having, or pretending to have the same or like Jurisdiction, Power, or Authority to commit or imprison as aforesaid: (2.) Or by the Command or Warrant of the King's Majesty, his Heirs and Successors in their own Person, or by the Command or Warrant of the Council-board; or of any of the Lords or others of his Majesty's Privy-Council. (3.) That in every such case, every Person so committed, restrained of his Liberty, or suffering Imprisonment, upon demand or motion made by his Council, or other implied

employed by him for that purpose, unto the Judge of the Court of *King's-Bench*, or *Common-Pleas* in open Court, shall without delay, upon any pretence whatsoever, for the ordinary Fees usually paid for the same, have forthwith granted unto him a Writ of *Habeas Corpus*, to be directed generally unto all and every Sheriff, Goaler, Minister, Officer, or other Person in whose Custody the Person committed or restrained shall be. (4.) And the Sheriffs, Goaler, Minister, Officer, or other Person, in whose Custody the Party so committed or restrained shall be, shall at the Return of the said Writ, and according to the Command thereof, upon due and convenient notice thereof given unto him at the Charge of the Party who requireth or procureth such Writ, and upon security by his own Bond given, to pay the Charge of carrying back the Prisoner, if he shall be remanded by the Court to which he shall be brought; as in like cases hath been used, such Charges of bringing up and carrying back the Prisoner, to be always ordered by the Court, if any difference shall arise thereabout, bring or cause to be brought the Body of the said Party so committed or restrained unto, and before the Judges or Justices of the said Court, from whence the same Writ shall issue, in open Court: (5.) And shall then likewise certify the true Cause of such his Detainer or Imprisonment, and thereupon the Court within three Court days after such Return, made and delivered in open Court, shall proceed to examine and determine, whether the Cause of such Commitment appearing upon the said Return, be just and legal, or not, and shall thereupon do what to Justice shall appertain, either by delivering, bailing, or remanding the Prisoner: (6.) And if any thing shall be otherwise wilfully done, or omitted to be done by any Judge, Justice, Officer or other Person aforementioned, contrary to the direction and true meaning hereof, then such Person so offending shall forfeit to the Party grieved, his treble Damages, to be recovered by such means and in such manner as is formerly in this Act limited and appointed.

appointed for the like Penalty to be sued for and recovered.

9. Provided always, and be it enacted, That this Act, and the several Clauses therein contained, shall be taken and expounded to extend only to the Court of Star-Chamber: (2.) And to the said Courts holden before the President and Council in the Marches of *Wales*: (3.) And before the President and Council in the Northern Parts; (4.) And also to the Court commonly called the Court of the Dutchy of *Lancaster*, holden before the Chancellor and Council of that Court: (5.) And also in the Court of *Exchequer*, of the County Palatine of *Chester*, held before the Chamberlain and Council of that Court: (6.) And to all Courts of like Jurisdiction to be hereafter erected, ordained, constituted, or appointed as aforesaid; and to the Warrants and Directions of the Council-board, and to the Commitments, Restraints and Imprisonments of any Person or Persons made, commanded or awarded by the King's Majesty, his Heirs or Successors in their own Person, or by the Lords and others of the Privy-Council, and every one of them.

And lastly, Provided and be it enacted, That no Person or Persons shall be sued, impleaded, molested or troubled for any Offence against this present Act, unless the Party supposed to have so offended shall be sued or impleaded for the same within two Years at the most after such time, wherein the said Offence shall be committed.

### *The Comment.*

**THE** Court of *Star-Chamber* (so called because held in a Chamber at *Westminster*, the Roof of which is garnisht with Golden Stars) was not originally erected, but confirmed and establisht by the Stat. of the 3 *Hen. 7. Cap. 1.* For there had before been some such Jurisdiction, as  
Coke

he observes 4. *Instit. fol. 62.* yet there is reason to believe, That it grew up rather by Connivance and Usurpation, than any due course of Law. The Crimes it pretended to punish were the exorbitant Offences of great Men (whom Inferior Judges and Jurors (though they should not) would in respect of their Greatness be afraid to offend) Bribery, Extortion, Maintenance, Carnality, Imbracery, Forgery, Perjury, Libelling, Challenges, Duels, &c. Their proceedings were by *Writs*, *Bill*, and *Process* under the great Seal; and the Punishments by them inflicted were *Fines*, *Imprisonment*, *Plucking off Ears*, &c. But whatever pretences there were for the setting up this Court at first, 'tis certain it was made use of as a Property of Arbitrary Power to crush any whom the ruling *Ministers* and *Favourites* had in mind to destroy; and indeed there were three things in the very nature of this Court, which were destructive to the original Constitution of our *English* Government and Liberties. 1. They proceeded without Jurisdiction. 2. They pretended to a Power to examine Men upon their Oaths, touching Crimes by them supposed to be committed, which is contrary to all Law and Reason; For, *Nemo tenetur seipsum Accusare: No Man is bound to accuse himself.* 3. The Judges of this Court proceeded by no known Law or Rules, but were left at liberty to act Arbitrarily, and according to their own pleasures: whereas the Law of *England* hates to leave to any such an unlimited Power, but as it marks out the several Species of Crimes, such or such an Act shall be *Treason*; this *Felony*, that *petty Larcenary*, &c. So it awards certain and positive Punishment, proportionate to each of them. Therefore this Court being found a Grievance to the Subject, was by this Act dissolved and taken away.

And to the intent nothing of the like kind should by any other name be practised for the future, it is declared and enacted, That the King and his Privy-Council shall not question or dispose of the Lands or Goods of any Subjects:

## English Liberties.

Subjects: And if they do, each Privy-Counsellor present  
pays 500 l. to the Party grieved.

### A Clause in the Act of 31 Car. 2. Cap. 1.

Whereas by the Laws and Customs of this Realm, the Inhabitants thereof cannot be compelled against their wills to receive Souldiers into their Houses, and to sojourn them there, be it declared and enacted by the Authority aforesaid, That no Officer, Military or Civil, nor any other Person whatever, shall from henceforth presume to Place, Quarter or Billet any Souldier or Souldiers upon any Subject or Inhabitant of this Realm, of any degree, quality or profession whatever, without his consent; And that it shall and may be lawful for every such Subject and Inhabitant, to refuse to Sojourn or Quarter any Souldier or Souldiers, notwithstanding any Command, Order, Warrant, or Billeting whatever.

### Terms of Liberty of Conscience to Protestant Dissenters.

**A**ND now the Protestant Dissenters from the Church of England being very numerous, and making a great Part of the Nation, the Parliament of England, took their suffering by the Penalties of divers strict Penal Laws for Non-Conformity, and meerly upon the Account of Religion, that as free-born Subjects their Liberties might not be abridged in any thing they prepared, and passed an Act, Intituled an Act for exempting their Majesties Protestant Subjects, dissenting from the Church of England, from the Penalties of certain Laws upon the following Conditions: First, That they take the Oaths in an Act, Intituled an Act for removing and preventing all Questions and Disputes concerning the



the assembling and sitting of this present Parliament:  
which Oaths are these.

I A. B. Do sincerely promise and swear, That I will be  
faithful, and bear true Allegiance to their Majesties King  
William and Queen Mary:

So help me God.

I A. B. Do swear, That I do from my Heart, abhor, detest  
and abjure that damnable Doctrine and Position: That  
Princes excommunicated or deprived by the Pope, or any Au-  
thority from the See of Rome, may be deposed and murdered  
by their Subjects, or any other whatsoever. And, I do de-  
clare, That no Foreign Prince, Person, Prelate, State or  
Potentate hath, or ought to have any Power, Jurisdiction or  
Superiority, Preeminence or Authority Ecclesiastical or Spi-  
ritual within this Realm.

So help me God.

Secondly, That they make and subscribe the Declara-  
tion, mentioned in a Statute made in the Thirtieth Year of  
the Reign of King Charles the Second; Entituled, *An Act*  
*to prevent Papists from sitting in either Houses of Parliament;*  
which, for the better satisfaction of the Reader, we have  
here incerted, viz.

I A. B. Do solemnly and sincerely in the Presence of  
God, profess, testify and declare, That I do believe, that in  
the Sacrament of the Lord's Supper, there is not any Transub-  
stantiation of the Elements of Bread and Wine into the Body  
and Blood of Christ, at, or after the Consecration thereof by  
any Person whatsoever, and that the Invocation and Adoration  
of the Virgin Mary, or any other Saint, and the Sacrifice  
of the Mass, as they are now used in the Church of Rome,  
are Superstitious and Idolatrous: And I solemnly in the pre-  
sence of God, profess, testify and declare, that I do make  
this Declaration, and every part thereof, in the plain and ordi-  
nary Sense of the Words read unto me as they are commonly un-  
derstood by English Protestants, without any Evasion, Equivo-  
cation.

ation, or mental Reservation whatsoever; and without any Dispensation already granted me for this purpose, by the Pope or any Authority or Person whatsoever, or without any hope of any such Dispensation from any Person or Authority whatsoever, or without thinking I am, or can be acquitted before God or Man, or absolved of this Declaration, or any part thereof; although the Pope or any other Person or Persons, or Power whatsoever, should dispense with, or annul the same, or declare that it was null and void from the beginning.

This Declaration was chiefly to keep the Papists from getting into Places of Trust, under the feigned Disguise of Dissenters: And these Oaths and Declaration the Justices of the Peace at the general Sessions to be held for the County or Place where such Person shall live; are hereby required to tender and administer to such Persons as shall offer themselves to take, make and subscribe the same, and in order thereto to keep a Register for the Entering of which they are to pay Six Pence, and for taking out a Certificate thereof, to pay the like Sum, and no more.

And that any Justice of the Peace may hereafter, at any time require any Person that goes to any Meetings for exercise of Religion, to make and subscribe the Declaration aforesaid; and also to take the said Oaths or Declaration of Fidelity herein after mentioned; and in case such Person scruples the taking of an Oath, and upon refusal thereof to commit such Person to Prison, without Bail or Main-prize: Which Declaration of Fidelity is in these Words expressed.

I A. B. Do sincerely promise and solemnly declare before God and the World, That I will be true and faithful to King William and Queen Mary; and do solemnly profess and declare, that I do from my Heart abhor, detest and renounce as Impious and Heretical, that damnable Doctrine and Position that Princes excommunicated or deprived by the Pope, or any Authority of the See of Rome, may be deposed or murdered by their Subjects, or any other whatsoever: And I do declare, that no Foreign Prince, Person, Prelate, State or Potentate

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but or ought to have any Power, Jurisdiction, Superiority, Prebeminence or Authority Ecclesiastical or Spiritual within this Realm.

And for a further Confirmation of their Fidelity, shall subscribe a Profession of their Christian Beliefs in these Words.

I A. B. Profess Faith in God the Father, and in Jesus Christ his eternal Son, the true God, and in the Holy Spirit, one God, blessed for ever more; and do acknowledge the Holy Scriptures of the Old and New Testament, to be given by divine Inspiration; which Declarations and Subscriptions shall be made and entered upon Record at the General or Quarter Sessions of the Peace for the County, City or Place, where every such Person shall then reside.

Always provided, that those who refuse to take the Oaths when lawfully tendered, shall not be admitted to make and subscribe the two Declarations aforesaid (unless such Persons can within three Days after the tender of such Declarations) to him produce two sufficient Protestant Witnesses to testify upon Oath, that they believe him to be a Protestant Dissenter, or a Certificate under the Hands of four Protestants, who are conformable to the Church of England, and have taken the Oaths, and subscribed the Declarations above-mentioned; and shall also produce a Certificate under the Hands and Seal of Six more sufficient Men of the Congregation to which he belongs owning himself to be one of them.

Also provided, that until such Certificates be produced, the Justice of Peace is required to take a Recognizance with two Sureties in the penal Sum of Fifty Pounds for his producing the same (or if he cannot give Security) to commit him to Prison, there to remain until he can do it.

Provided always, that if any Assembly of Persons dissenting from the Church of England, shall be had in any place for Religious Worship, with the Doors locked, barred, or bolted, during the time of such meeting together,

gether, all and every Person that shall come to, and be at such meeting, shall not receive any benefit from this Law, notwithstanding his taking the Oaths, and taking the Declaration aforesaid.

Provided, that nothing in this Act be construed to exempt any Person from paying of Tithes, or any other Duties to the Church or Minister; provided, that the Laws made for frequenting divine Service, be in force against all Persons that offend against them, except such Persons come to some Congregation of Worship, allowed by this Act.

Provided always, that no Congregation for Religious Worship shall be permitted, or allowed by this Act until the place of such meeting be certified to the Bishop of the Diocess, or to the Arch-Deacon of the Arch-Deconary, or to the Justices of the Peace at the General or Quarter Sessions of the Peace, for the County, City, or Place in which such meeting shall be held; which is there to be registered, and a Certificate delivered for Six Pence when demanded.

And lastly, There is required of every Preacher over and above the said Injunctions, that he do declare his Approbation, and subscribe the Articles of Religion mentioned in the Statute made in the Thirteen Year of Queen Elizabeth (except the thirty fourth) about Traditions of the Church, the thirty seventh concerning Homilies, and the thirty sixth of Consecration of Bishops and Ministers; and these Words of the twenty first Article, viz. *The Church hath Power to decree Right or Ceremonies and Authority in Controversies of Faith; and those that scruple baptizing Infants may except part of the twenty seventh Article, touching Infant Baptism.*

An Abstract of the Laws against Popery and Papists, &c.

**T**HE second Refusal of the Oath of Supremacy, punisht as *High Treason*, 5 *Eliz.* 1.

To maintain or extol Authority of the See of Rome, the second time *High Treason*, 5 *Eliz.* 1.

To obtain or put in use any Bull from Rome, *High Treason*, 13 *Eliz.* 2.

To perswade or reconcile, OR TO BE RECONCILED to the Roman Religion, *High Treason*, 23 *Eliz.* 1. & 3 *Jac.* 4.

For Jesuite or Priest made by Authority from the Pope, to come into, or remain in, the King's Dominions, *High Treason*, 27 *Eliz.* 2.

So for remaining in a Seminary six Months after Proclamation, and afterward returning, *High Treason*, 27 *Eliz.* 2.

For Concealing of a Bull, or other Instrument from Rome, or reconciliation offer'd, punish'd as *Misprision of Treason*, 13 *Eliz.* 2.

To maintain or conceal those who perswade, or are reconcell'd to the Roman Religion, *Misprision of Treason*, 33 *Eliz.* 1.

To receive, relieve, comfort Jesuite or Priest, knowing him to be such, punisht as *Felony*, 27 *Eliz.* 2.

To go and serve a Foreign Prince, having not before taken the Oath of Allegiance, and entred Bond not to be reconciled to the Roman Religion, *Felony*, 3 *Jac.* 4.

The first Refusal of the Oath of Supremacy, is punisht as in case of a *Premunire*, which imports a Forfeiture of all Lands and Goods, Imprisonment for Life, and a Deprivation of the Benefit of Law, 5 *Eliz.* 1.

To set forth or defend Power Spiritual in the See of Rome, *Premunire*, 5 *Eliz.* 1.

To bring or receive any *Agnus Dei*, Crosses, Pictures, or such like from *Rome*, *Premunire*, 13 *Eliz.* 2. 23 *Eliz.* 1.

To aid any Person who hath put in use any Bull from the See of *Rome*, *Premunire*, 13 *Eliz.* 2. 23 *Eliz.* 1.

To send or give relief to any continuing in *Colledges* or *Seminaries* beyond Sea, *Premunire*, 27 *Eliz.* 2.

Refusal of the Oath of Allegiance upon the second Tender, *Premunire*, 3 *Jac.* 4. & 7 *Jac.* 6.

For not discovering of Priests made beyond the Seas, *Imprisonment*, 29 *Eliz.* 2.

Upon Indictment of Recusancy by Proclamation, *Imprisonment*, 27 *Eliz.* 6.

Those that are not able, or fail to pay their Forfeitures, are to be imprisoned until Payment or Conformity. 23 *Eliz.* 1.

Women covert imprisoned for refusal of the Oath of Allegiance, 3 *Jac.* 4.

For Non-payment of Twelve Pence for every Sunday, *Imprisonment*, 3 *Jac.* 4.

Women Covert convicted for Recusancy, imprisoned till her Husband pay Ten Pounds a Month, or a Third part of his Lands, 7 *Jac.* 6.

Standing excommunicated for Recusancy, House may be broken up for his apprehension, 7 *Jac.* 6.

Those who shall forbear to come to Church by the space of Twelve Months, bound to good Behaviour, with Surety in the *King's-Bench*, 23 *Eliz.* 1.

Every Recusant is confin'd to five Miles compass for Life, 23 *Eliz.* 2. To Ten Miles distant from *London*, 3 *Jac.* 5.

Not to come into the House where the King, or his Heir apparent is, 3 *Jac.* 5.

For absence from Church Service every Sunday Twelve Pence forfeited, 1 *Eliz.* 2.

And for every Holiday Twelve Pence forfeited, 3 *Jacob.* 4.



## English Liberties.

111

For absence from Common-prayer, every Month Twenty Pounds forfeited, 23 *Eliz.* 1. 3 *Fac.* 4.

For default of payment of Twenty Pounds a Month, all Goods, two parts of Land and Leases forfeited, 29 *Eliz.* 6. & 3 *Fac.* 4.

At the King's Election to take or refuse twenty Pounds a Month, or to take two parts of the Recusants Estates, 3 *Fac.* 4.

All Copy-hold Lands of Recusants forfeited, 25 *Eliz.* 2.

The Forfeitures of the Ancestor charged upon his Heir being a Recusant, 1 *Fac.* 4.

A Recusant forfeits for not receiving the Sacrament according to the Service-Book, the first Year Twenty Pounds, the second Year Forty Pounds, the Third Year and every Year after sixty Pounds, 3 *Fac.* 4.

To the Presenter out of the Recusants Goods Forty Shillings forfeited, 3 *Fac.* 4.

For every Recusant, Sojourner and Servant, Ten Pounds for every Month forfeited, 3 *Fac.* 4.

Two parts of Dower or Joynture of a Married Woman forfeited, 3 *Fac.* 5.

Coming to Court, an hundred Pounds forfeited, 3 *Fac.* 5.

For not Baptizing of Children according to the Service-Book publickly, within a Month after their Birth, an hundred Pounds forfeited, 3 *Fac.* 5.

For Marrying otherwise than by a Minister, an hundred Pounds forfeited, 3 *Fac.* 5.

For Burying out of the Church or Church-yard, an hundred Pounds forfeited, 3 *Fac.* 5.

For sending Children beyond Seas without License, an hundred Pounds forfeited, 1 *Fac.* 4.

For maintaining a School-master not going to Church, or allowed to teach, for every Month Ten Pounds forfeited, 23 *Eliz.* 1. & 29 *Eliz.* 6.

And Forty Shillings *per Diem* forfeited by the School-Master and Recusant that keeps him, 1 *Fac.* 4.

All Goods and Lands during Life, for breach of Confinement forfeited. 23 *Eliq.* 2. & 3 *Fac.* 5.

The like Forfeiture for going or sending Children beyond the Seas to be bred in Popery, 3 *Car.* 2.

For residing within Ten Miles of London, an hundred Pounds forfeited, 3 *Fac.* 5.

For practicing any Function expressed in the Statute of 3 *Fac.* 5. an hundred Pounds forfeited, 3 *Fac.* 5.

Disabled to reverse Indictment for want of form or other defect, 3 *Fac.* 4.

Disabled from the Practice of several Functions, whereby to gain their Livings, *viz.* from practicing common Law, civil Law, or being a Steward, Attorney, Solicitor or Officer in any Court; from practicing Physick, or being Apothecary, and from bearing any Office in Camp, Troop or Band of Souldiers, or in any Ship, Castle or Fortress, &c. 3 *Fac.* 5.

By the Wifes Recusancy, the Husband disabled from publick Office or Charge in the Common-wealth, 3 *Fac.* 5.

By Marrying otherwise than the Church of England alloweth, the Husband disabled to be *Tenant by Courtesie*, the Wife disabled to have *Dower*, *Joynture*, *Free-Banks*, or any part or Portion of her Husband's Goods, 3 *Fac.* 5.

Disabled to sue or prosecute Actions, to present to a Benefice, to be Executor, Administrator, or Guardian, 3 *Fac.* 5.

Children sent beyond the Seas without License, are disabled to take benefit of Gift, Conveyance, Descent or Device, 1 *Fac.* 4. & 3 *Fac.* 5.

Notwithstanding these Forfeitures, Recusants are no less Subject to Ecclesiastical Sentences. 23 *Eliq.* 1. & 3 *Fac.* 45. [But *Quare*, How many Papists *quâ* *Tales*, were ever excommunicated since the King's happy Restauration, though many thousand Protestants have been:] Refusal to receive the Sacrament, and take the Oaths

of

of Supremacy and Allegiance, *ipso facto* disabled from any publick Trust. 25 Car. 2. Cap. 2.

Peers and Members of Parliament disabled to sit until taking of Oaths of Allegiance and Supremacy, and declaring against Transubstantiation and the Idolatry of Rome, 30 Car. 2. Stat. 2.

Having thus collected together divers of the most remarkable and advantagious of our Laws, whereby the Liberties of *English* Men are guarded and secured; since the best of Laws are but insignificant Cyphers, if not honestly put in execution; and since in the Execution of our Laws *JURIES* are mainly concern'd, who, if Ignorant of their Duty, or corrupt, or over-awed, and not daring to make use of that just Power, wherewith the Law hath invested and intrusted them, may give up all those precious Priviledges, and subject us to the worst kind of slavery, under pretence of Law: therefore here in the last place, for the Information of my honest Countrymen, the Freeholders of *England*, and others who in Corporations are daily call'd to this important Service, I shall subjoin a brief Discourse of *Juries*.

## SECT. I.

Of the Advantages *English* Men enjoy by this Trial by Juries, above any other Nation under Heaven.

'TIS one of the miserable Follies of depraved human Nature, that it commonly slights present Enjoyments, and rarely rates the good things it possesses at their true value, till 'tis deprived of them. This grand Priviledge of *Tryals per pais*, by our Country, that is by *JURIES*, as it seems to have been as Ancient as the Government or first form of Policy in this Island; for it

was not unknown to the ancient *Britains* (as appears by their Books and Monuments of Antiquity) practiced by the *Saxons*, [see King *Ethelreds* Laws in *Lambert*, p. 218. and *Coke* 1. part *Instit.* fol. 155.] and confirmed since the Invasion of the *Normans* by *Magna Charta* as you have heard, and continual usage; so it is a thing of the *highest Moment* and an essential Felicity to all *English* Subjects.

For look abroad in *France*, *Spain*, *Italy*, or indeed (almost) where you will, and observe the miserable Condition of the Inhabitants, either intirely subjected to the Arbitrary Lusts of Tyrants, who plunder, dismember or slay them, according as the Humour takes them, and many times without the least provocation, merely for sport, and to gratifie a *Savage Cruelty*; Or at best, you will behold them under such Laws as render their *Lives*, *Liberties* and *Estates* liable to be disposed of at the discretion of strangers appointed their *Judges*, most times *mercenary*, and Creatures of Prerogative; sometimes malicious and oppressive, and too often *partial* and *corrupt*. Or suppose them never so just and upright, yet still has the Subject no security against *Subornations*, and the Attacks of malicious, false and unconscionable Witnesses; yea when there is no *sufficient Evidence*, upon meer suspicions they are obnoxious to the *Tortures of the Rack*, which often make an innocent Man confess himself guilty, merely to get out of present pain: Or if he do with invincible Courage endure the *Question* (as they call those Torments) he is many times so spoiled in his Limbs, as he scarce ever is his own Man again.

Whereas such has been the Goodness of God, and the prudent Care of our Ancestors, that to our inestimable Happiness, we are born and live under a mild and righteous Constitution, where all these mischiefs may be prevented, where none can be legally condemned, either by the Power of Superior Enemies, or the rashness or ill-will of any Judge, nor by the bold Affirmations of *profligate Evidence*: For by a Fundamental Law in our Government,

ment, No Man's Life (unless it be in Parliament, which is a Supream Court, and 'tis supposed will never do any Man wrong) shall be touched for any Crime whatsoever, but upon being found Guilty on two several Trials (so may that of the Grand and Petty Jury be called) and the Judgment of twice Twelve Men at least, all of his own Condition and Neighbourhood, and upon their Oaths, [*Coke 3. part of Instit. p. 40.*] That is to say, Twelve or more to find the Bill of Indictment against him, and Twelve others to give Judgment upon the general Issue of *Not Guilty*: All which Jurors must be honest, substantial, impartial Men, and being Neighbours of the Party accused, or place where the supposed Fact was committed, cannot be presumed to be unacquainted either with the Matters charged, the Prisoner's course of Life, or the Credit of the Evidence: And all must first be fully satisfied in their Consciences, that he is Guilty, and so unanimously pronounce him upon their Oaths, or else he cannot be condemned. For the Office and Power of these Juries is *judicial*: They only are the Judges, from whose Sentence the indicted are to expect *Life or Death*; upon their Integrity and Understanding, the Lives of all that are brought into Judgment do ultimately depend; From their *Verdict* there lies no *Appeal*: By finding Guilty or not Guilty, they do complicate resolve both Law and Fact,

*Judges* are made by Prerogative, and many times heretofore they have been preferred by *corrupt Ministers of State*, and may be so again in time to come; and such advanced as would serve a present Turn, not always those of the most Integrity and Skill in the Laws: Their Places are so honourable and profitable, and their *Tenure* so ticklish, *viz. durante beneplacito*, merely during pleasure, that they lie under no small Temptations, which perhaps with some may be nevertheless unlikely to prevail; for their having generally been wont before to take Fees, they are concern'd in so many Causes, that they are the oftner subject to be tempted,

and are so few that they may be the easier corrupted. They cannot be challenged; and may be apt to think themselves above any Action, and thence be encouraged to strain a Point now and then. The Major part of them agreeing, is enough: they are never sworn at each particular Tryal, nor ever at all but once, and that exceeding generally; I say all these things may possibly sometimes happen to Bials some Judges (for I intend not the least Reflection hereby on any of those *honourable Persons* who at present deservedly supply our seats of Justice.) But nothing of that kind can reasonably happen to a *Fury*. For, 1. They are return'd by a sworn Officer. 2. Must be Men of a clear Reputation, and competent Estate. 3. Being Neighbours, they may know something of the business on their own knowledge. 4. Their Office is but a Trouble, not accompanied with any great Honour, nor any Profit at all. 5. They are all solemnly sworn to each particular Cause. 6. The Party may challenge thirty five in case of Treason, and 20 of them in Felony, without shewing any cause, and as many more as he can assign cause against. 7. Of the Grand Jury Twelve at least must joyn in the Verdict, and of the petty *Fury* every Man of the Twelve must consent upon his Oath, or else 'tis all nothing. And lastly, if they give a corrupt Verdict between party and party, they are liable to an *Attaint*. [But I do not find any *Attaint* lies in criminal Causes, where the King is a Party.]

Now let any Man of Sense consider, whether this method be not more proper for *bolting* out the Truth, for finding out the *Guilty*, and preserving the *Innocent*, than if the whole Decision were left to the Examination of a Judge, or two or three, whose *Interest*, *Passions*, *Taste*, or *Multiplicity* of business may easily betray them into Error.

Deservedly therefore is this privilege of Tryal by *Juries* rank'd amongst the choicest of our fundamental *Laws*, which whosoever shall go about openly to suppress,



or craftily to *Undermine*, and render only a Formality, does *ipso Facto* attack the Government, and brings in an Arbitrary Power, and is an Enemy and Traytor to his King and Country; For which reason *English Parliaments* have all along been most zealous for preserving this great Jewel of Liberty, Tryals by Juries, having no less than fifty eight, several times since the *Norman Conquest* been established and confirmed by the Legislative Power, no one privilege besides having been ne'er so often remembred in Parliament.

## S E C T. II.

*What Persons ought to be JURY-MEN, and how Qualified.*

AS the Office of Juries is of such great Importance, the Wisdom of our Law has provided that the same shall be supplied with Persons of Ability, Honesty, Integrity and Indifferency: for (as my Lord Coke saith, 1 Part 2. *lit. Sect.* 234. fol. 155.) He that is of a Jury must be *Homo*, that is, not only a *Free-man*, and not bound, but also one that hath such *Freedom of Mind*, as he stands indifferent, as he stands unsworn. 2. He must be *Legalis*, and by the Law every *Furor* that is returned for the Tryal of any Issue or Cause, ought to have three Properties. 1. He ought to be dwelling most near to the place where the Question is moved. 2. He ought to be most sufficient both for Understanding and competency of Estate. 3. He ought to be *least Suspicious*; that is, to be indifferent as he stands unsworn, and then he is accounted in Law, *Liber & Legalis Homo*, otherwise he may be challenged, and not suffered to be sworn; but a Mans being excommunicated (as was said before) is no Bar to his being a Jury-man, much less his being a Dis-senter.

senter of Non-frequenters of Church Ceremonies, if he  
 be otherwise qualified with Estate and Understanding; for  
 at that rate if Popery should ever get upper-most, no  
 Protestant at all would be capable of being a *Jury-man*,  
 because a *Nonconformist to Holy Church*. Now if no Sta-  
 tute excludes Protestants unconvicted of any Crime, or  
 Dissenters (*qua tales*) to serve on Juries, I should think  
 we ought to wait at least till an Act of Parliament be  
 made to that purpose, before we deny them *Liberam Le-  
 gem*; and to Act otherwise, in my silly Opinion, seems  
 not only unwarrantable, but a daring Usurpation of Le-  
 gislative Power: In a Word, *Jurors* must be free of, and  
 from, all manner of Bondage, Obligations, Affections,  
 Relations and Prejudices; they must be the Peers or E-  
 quals of the Party they are to try; they must be of full  
 Age, Twenty One Years old or upwards, not *Outlaw'd*,  
 never attainted or convicted of Treason, Felony, false  
 Verdict, Perjury, or adjudged infamous; they were an-  
 ciently all *Knights*, as we read in *Glanvil* and *Bracton*,  
 and they must still be Persons of *Worth and Reputation*; and as  
 they are returned by a sworn Officer, the Sheriff, so they  
 of the petty Jury must be every one sworn every several  
 Trial by a particular Oath, the more to remind them  
 of their Duty. Nay, it should seem in ancient Times,  
 the Office and Duty were still the same as at this day,  
 for their Honour and Dignity were much greater. *The  
 Duties of Justices*. (a great part of which was written be-  
 fore the Conquest, and augmented by *Andrew Horn*, a  
 learned Lawyer in the time of King *Edw. the 2d.*) p. 209.  
 [in the French, and 153. in the English] makes no scruple  
 to call them *JUDGES*; *Judges Ordinaries sunt Juris*;  
 and *Dr. Cowel* in his Interpreter, tells us, *Juries* were  
 [anciently] *Associates and Assistants to the Judges of the  
 Court in a kind of Equality, whereas now a days they attend  
 them in great Humility*; And cites the Customary of *Nor-  
 mandy* and *Lambert*, as being of the same Sentiment. Nay,  
 many wise and learned Men have wondred, that since  
 the Law has conferr'd such ample Power on Jury-men,  
 why

why they should have no kind of *mark of Honour or Distinction*, as liberty to sit with their *Hats on*, from the time they are sworn to the Delivery of their Verdict, or the like: For as the Custom is now a days, they sitting amongst the Croud with their *Caps off*, as well as the worst *Malefactors* they are to try, 'tis not easie knowing them from the rest of the Spectators. But this *Obser*: I desire not to bring in Innovations, but only that *English* Men may preserve their ancient undoubted Priviledges, to which purpose it will concern all that are liable to be summoned to serve on Juries, heedfully to inform themselves of their *Duty and Office* by Law, that so they may uprightly discharge the same to God and the King, and their fellow Subjects.

### S E C T. III.

*Of Grand Juries, their Duty, and the great Importance of their Office.*

Juries are of two sorts: 1. The *Grand Jury*, so called, both because it consists of a greater Number than *Twelve*, as commonly 21, 19, 17. or the like, [but note, they can make no Verdict or Presentment, unless Twelve at least of them agree, and then what they do, is valid; tho the rest do not consent:] as also because generally they are of the greater Quality, and likewise in respect of their Power, because the extent of their Office is more great and general, as extending to all Offences throughout the whole County for which they serve. 2. The *Petty Jury* (in Cases Criminal, called commonly the *Jury of Life and Death*) which always consists of *Twelve Men*, neither more nor less, who must every Man agree, or else it is no Verdict.

*The Oath of a Grand Jury-man, as I find it inserted in the Collection, Intituled, The Book of Oaths, p. 206. Is as follows.*

“**Y**OU shall truly inquire and due presentment make  
 “ of all such things as you are charged withal on the  
 “ King's behalf: The King's Counsel, your own; and  
 “ your Fellows you shall well and truly keep, and in all o-  
 “ ther things the Truth present: So help you God, and  
 “ by the Contents of this Book.

But according to modern Practice, and as we find it Published in the Account of the late Proceedings against the Right Honourable the Earl of *Shafisbury*, said to be Publish'd by His Majesty's special Command, is expressed somewhat more largely.

*The Oath Administred to the Grand Jury, as follows.*

“**Y**OU shall diligently inquire and true Presentment  
 “ make of all such matters, Articles, and things  
 “ as shall be given you in charge, as of all other  
 “ matters and things as shall come to your know-  
 “ ledge touching this present Service; the King's Council,  
 “ your Fellows and your own; you shall keep se-  
 “ cret; you shall present no Person for Hatred or Ma-  
 “ lice; neither shall you leave any one unpresented for  
 “ Fear, Favour or Affection, for Lucre or Gain, or any  
 “ hopes thereof, but in all things you shall present  
 “ the Truth, the whole Truth, and nothing but the  
 “ Truth, to the best of your Knowledge, So help you  
 “ God.

The Office of a Grand Jury, or *Grand Inquest* (for by both those Names 'tis promiscuously call'd) is principally concern'd in two things, *Presentments* and *Indictments*, the Difference of which is thus: The *First* is when the Jury

them.

themselves of their own knowledge or Inquiry do take notice of some Crime, Offence or Nuisance, to the Injury of the Public, which they think fit should be punished or removed; and in Order thereunto, do give the Court notice thereof in writing briefly, and without Form, only the Nature of the Thing, and the Persons Name, and the Place. And this is call'd a *Presentment*, being the Matter whereon to Form an Indictment, from which the Presentment differs in these two respects. 1. In that is always *Originally*, the Act of the Grand Jury. And, 2. That is not yet drawn up in *Form*; whereas Indictments are commonly drawn up either by the Order of the Courts, or at the Instance of some Prosecutor, and are brought before, and delivered unto the Grand Jury, and the Witnesses Sworn, attend them, who examine the said Witnesses, and as they think fit, Return the Indictments indors'd either *Bills Vera*, [that is, a true Bill,] or *Ignoramus*, [*We are Ignorant*] that is, we do not find the Matter, or there does not appear to us such sufficient Grounds for the Accusation, that the Persons Life and Reputation should be brought into question.

From whence it appears, that the End of their Office is likewise two-fold. 1. To enquire after, and give notice of all Crimes, Offences, Nuisances, &c. in the County, for which they serve, which by reason of their Inhabitaney and Estates, therein they are presumed to have best opportunity to discover, and to find Bills against Malefactors, where there are good Grounds for the same, that so they may be brought to Tryal, if they are forth-coming, or may be proceeded against to the Outlawry, if they are fled for their said Offences. 2. To preserve the innocent from the disgrace and hazards which ill Men may design to bring them to, out of malice, or through subornation or other sinister Ends; for so tender is the Law of the Reputation and Life of a Man, that it will not suffer the one to be sullied by the Parties holding up his hand at the Bar, and the other endan-

ger'd by a Tryal, until first the Matter and Evidence against him have been scann'd, examined, and found by a Grand Jury upon their Oaths against him. Therefore you see by their Oaths, They are sworn not only to enquire, but diligently to enquire, not to be negligent or slothful, nor to take things upon trust, or hurry them over carelessly, but to weigh the Circumstances, and sift the Witnesses, and search out the Truth of such Informations as come before them, and to reject the Indictment, if it be not sufficiently proved; and if they have reasonable Suspicion of Malice, Subornation, or wicked Designs against any Man's Life or Estate, in such as offer or come to Swear to the Bill of Indictment, they are bound by Law as well as in Conscience to use all diligence to discover the Villany; and if it appear to them (whereof they are the Legal Judges) to be a Conspiracy, or malicious Conspiracy against the Accused, they are bound not only to reject such Bill of Indictment, but forthwith to indict all the Conspirators with their Associates and Abettors: And that this is a main Part of the Grand Juries Office, appears not only from Legal Reason, but by an express Statute, viz. 25 Edw. 3. 4. and 42 Edw. 3. 3. which says, *That for preventing Mischiefs done by FALSE ACCUSERS, none should be put to answer, unless it be by Indictment or Presentment of good and lawful People of the same Neighbourhood, where such Deeds are done*; that is to say, by a Grand Jury.

The Grounds upon which Grand Juries are to proceed in giving their Verdicts, are either,

1. From their *own knowledge*, and so they may find an Indictment against a Person, though there be *never a Witness at all* to it, and a Petty Jury may in like manner find a Person *Guilty* of a Felony or Murder, whereof he stands Indicted, though *no Witnesses* appear against him to prove it; and the reason thereof is, because the Juries being always of the *Vicinage*, the Law supposes they may know the Matter of their own Knowledge, and therefore in all such Cases when a Jury is charged with a



Prisoner, and after the Indictment read, Witnesses fail to appear, the Court always speaks thus to the Jury: *Gentlemen, here is A. B. stands Indicted of such a Crime, but here's no Witnesses come against him, so that unless on your own knowledge you know him Guilty, you must acquit him*; and certainly if the Juries knowledge of a Man's Guilt, is enough to *Condemn him, I see not why their personal knowledge of a Prisoners Innocency or of the Witnesses Swearing falsely, should not be sufficient to acquit him.*

2. The other Ground upon which the Grand Juries are to proceed, is *Testimony of Witnesses*, and this is call'd *EVIDENCE*, because it ought to be such, as may make the Matter clear, manifest, plain and evident to the Jury; and of his *Evidence*, the Jury are the proper and only Judges, therefore they ought (according to their Oath) *diligently Inquire* into the Quality, Reputation, and Circumstances of the Witnesses, the likelihood of what they depose, and whether they do not Swear out of Malice, Subornation, Self-interest, Combination, or some ill Design; which to discover, they will do well to examine them apart, to note their variations and contradictions, to ask them sudden questions, and what questions are pertinent, not the Judges, but the Jury only can determine; for they may know how to make use of them towards discovery of the Truth, though the Judge do not, and 'tis they that are upon their Oaths, not he, 'tis they must satisfy their own Consciences, the Judge has nothing to do to intermeddle, he is bound by their verdict: let Witnesses be never so rampantly positive, yet if the Jurors have good and reasonable grounds not to believe them, they will, they must, remain as Ignorant to the Parties Crime as before: we find this expressly asserted for Law in our Books, as *Stiles's Reports*, L. 11. though there be Witnesses who prove the Bill, yet the Grand Inquest is not bound to find it, if they see cause to the contrary, so *Coke* L. 6. The Judges use to determine who shall be sworn, and what shall be produced as Evidence to the Jury, but the Jury are to con-

sider what Credit or Authority the same is worthy of. a Grand Jury are not Judges of Evidence, they signify nothing. If (as some would persuade us) because People swear desperately, though they do not believe them, they shall be bound to find the Bill, then they signify nothing, and are no security to preserve Innocency. lewd Woman once resolv'd to Indict the then Archbishop of Canterbury for a Rape, she Swore it no doubt very heartily, according to this new Doctrine of going according to Evidence, the Jury must presently have found the Bill, the Archbishop must have been committed to Prison, Suspended from Ecclesiastical Jurisdiction, his Goods and Chattels throughout England, Inventoried by the Sheriffs; would it think you, in that Case have been a good Excuse for the Grand Jury, to have said that though they believ'd in their Conscience the Baggage swore false, yet the swearing it positively, they as to many Parish Clerks were but to say Amen to her Oath of the Fact, and to find *Bills Vera* against that eminent Prelate? And if the Jury be Judges of the Credibility of Evidence in this Case, and may go contrary to it, why I pray may they not have the same Liberty where they find good Cause in others?

• If an Indictment be laid against a Man for Criminal words, said to be utter'd in a Colloquium, or Discourse, though the Witnesses roundly swear all the express words in the Indictment, yet unless they will relate, and set forth the Substance of the *whole Talk*, 'tis impossible the Jury should Judge of the Matter; for the *foregoing and subsequent* words may render Expressions that are Innocent and Loyal, which taken to halves, may be rank Treason; as if one should say *To affirm the King, has no more Right to the Crown of England than I have* (which is the Opinion of the Jesuits, of his Majesty, if once Excommunicated by the Pope) is detestable Treason: And two Men at some distance, not well hearing or remembering, or maliciously designing against his Life, should Swear— That he said, *The King had no more right to the Crown than*

be bad: Now that the Man did utter these words is true, but if you ask the Evidence the rest of the Colloquium, they shall tell you there was much more discourse, but they cannot remember it; what satisfaction is this to a Jury? Or would it not be hard for a Man to be put to hold up his Hand at the Bar, under the frightful Charge of Treason in this Case? Or if a Minister in his Sermon should Recite that of the *Psalms*, *The Fool hath said in his Heart there is no God*: Jesuited Evidence may now come and Charge him with Blasphemy, and Swear that he said, *There was no God*: and ask them what Expressions besides he used, may excuse themselves and say, 'Tis a great while ago, we cannot remember a whole Sermon, but this we all positively Swear, *He said there was no God*.

The Inquiry of a Grand Jury should be suitable to their Title, a *Grand Inquiry*; else instead of serving their Country, and presenting real Crimes, they may oppress the Innocent, as in the Case of *Samuel Wright*, and *John Good*, at a Sessions in the *Old-Bailly*, about *December*, 1681. *Good* Indicts *Wright* for Treasonable words, and swore the words positively; but after a Grand Enquiry, the Grand Jury found that *Wright* only spoke the words as of others, thus, *They say so and so*——and concluded with this——*They are Rogues for saying it*; and also *Good* at last confessed that *Wright* was his Master, and Corrected him for Misdemeanors, and then to be Reveng'd he comes and Swears against him, which he Confessed he was Instigated to by one *Powel*; so the Grand Jury finding it to be but Malice, return'd the Bill *Ignoramus*: whereas if they had not examin'd him strictly, they had never discover'd the Intrigue, and the Master had Causelessly been brought to great Charge, Ignominy and Hazard.

The Judicious *Dalton*, p. 539 says well, *No less care or concern at all lies on the Grand Jury, than does on the Petty Jury*: People may tell you, *That you ought to find a Bill upon any probable Evidence, for 'tis but matter of Course,*

Course, a Ceremony, a Business of Form, only an Accusation the Party is to come before another Jury, and there may make his Defence: But if this were all, to what purpose have we Grand Juries at all? Why are the wisest, best Men in a County (for such they are or should be) troubled? Why are they so strictly sworn? Do not flatter yourselves, you of the Grand Jury are as much upon your Oaths as the Petty Jury, and the Life of the Man against whom the Bill is brought, is in your Hands: The Lord Cook 2. *Inst.* 33. plainly calls the Grand Jury-men, all wilfully forsworn and Perjured, if they wrongfully find an Indictment; and if in such a Case the other Jury through Ignorance, &c. should find the Person *Guilty* too, you are *Guilty* of his Blood as well as they: but suppose he get off there, do you think it nothing to accuse a Man upon your Oaths, of *horrid Crimes*, your very doing of which puts him though never so Innocent, to disgrace, trouble, damage, danger of Life, and makes him liable to Outlawry, Imprisonment, and every thing but Death itself, and that too for ought you know may wrongfully be occasion'd by it, your rash Verdict gaining Credit, and giving Authority to another Jury, not to find him *Guilty*: for if the Petty Jury find a Man *Guilty* never so unjustly, the Law suffers no Attaint or other Punishment to lye against them for this very reason, because another Jury, viz. the Grand Inquest as well as they, have found him Guilty. If a Grand Jury find a Bill wrongfully against a Person, and it prove never so much to his damage, he has no remedy: for being upon their Oaths, the Law will not suppose any malice. One of the Grand Jury cannot afterwards be of the Petty Jury, and why? Because, says the Law, he has once already found the Party *Guilty*, and if he should not again, he must perjure himself. From all which it appears, what a weight and stress the Law puts upon the Verdict of a Grand Jury; and 'tis remarkable too, that the Law directs them only to say, either, *Bill vera, It is true,* Or, *Ignoramus, We know not;* and never, *That it is not true:*

Which

Which shews, That if they be doubtful, or not fully  
 satisfied, The Indictment must be Endorsed not *Bill*  
*vera*, we know 'tis true, but *Ignoramus* We doubt it,  
 We do not know it, We are not certain it be true. If  
 they find a Bill where they ought not, they wound their  
 own Consciences, and do an irreparable damage to the  
 party; but where they do not find the Bill, there is no  
 harm done to any body, for another Indictment may be  
 brought when there is better Evidence.

#### S E C T. IV.

*That Juries are Judges of the Law in some respects  
 as well as Fact.*

**A**Mongst other devices to undermine the Rights and  
 Power of Juries, and render them Insignificant,  
 there has an opinion been advanced, That they are only  
 Judges of the Fact, and are not at all to consider the Law;  
 so that if a Person be Indicted for a Fact, which really is  
 no Crime in it self by Law, but is workt up by words of  
 form, as *Treasonably*, *Seditionously*, &c. if the Fact be but  
 proved to be done, though the said wicked Circumstances  
 do not appear, they shall be supplied by the Law, which  
 you are not to take notice of, but find the Bill, or bring  
 in the Person Guilty, and leave the consideration of the  
 Case in Law to the Judges, whose business it is.  
 Thus some People argue, but this is an apparent *Trap*,  
 to once to Perjure Ignorant Juries, and render them so  
 far from being of good use, as to be only Tools of Op-  
 pression, to Ruine and Murther their Innocent Neigh-  
 bours, with the greater Formality: For though it be true,  
 that matter of Fact is the most common and proper Ob-  
 ject of a Juries determination, and matter of Law that of  
 the Judges, yet as Law arises out of, and is, complicated  
 with

with Fact, it cannot but fall under the Juries consideration, *Litlton, Sect. 368.* teaches us, That the Jury may at their Election either take upon them the Knowledge of the Law, and Determine both the Fact and Law themselves, or else find the matter specially, and leave it to the Judges: 'Tis by applying matter of Fact and Law together, and from their due consideration of, and right Judgment upon, both, that a Jury brings forth their Verdict. Do we not see in most General Issues, as upon Not Guilty pleaded in Trespass, breach of the of the Peace, or Felony, though it be *matter in Law*, whether the Party be a *Trespasser*, a *Breaker of the Peace*, or a *Felon*, yet the *Jury* do not find the Fact of the Case by it self, leaving the Law to the Court, but find the Party *Guilty* or not *Guilty generally*; so that though they Answer not to the Question singly, what is Law, yet they determine the Law in all *matters* where Issue is Joyned. Is it not every days *Practice*, when Persons are Indicted for Murder, the *Jury* does not only find them Guilty, or not Guilty, but many times upon hearing and weighing of Circumstances, *brings* them in either *Guilty of the Murder*, or else only of *Man-slaughter, per Misadventure*, or *se defendendo*, as they see cause? Besides, as *Juries* have ever been vested with such Power by Law, so to exclude them from, or Disseize of, the same, were utterly to Defeat the End of their Institution. For then if a Person should be Indicted for doing any common Innocent Act, if it be but cloathed and disguised in the Indictment with the Name of *Treason*, or some other high crime, and proved by Witnesses to have been done by him, the *Jury*, though satisfied in Conscience, that the Fact is not any such Offence, as 'tis called, yet because (according to this fond Opinion) they have no Power to Judge of Law, and the Fact charged is fully proved, they should at this Rate be bound to find him Guilty; and being so found, the Judge may pronounce Sentence against him, for he finds him a *Convicted Traitor, &c.* by his Peers:

and



and so *Furies* should be made meer *Properties* to do the *Duty*, and bear the blame of unreasonable *Prosecutions*. But all this is absur'd, and abhor'd by the Wisdom, Justice and Mercy of our Laws.

In every *Indictment*, *Information*, &c. there are certain words of course, called *matter of form*, as *Maliciously*, *Seditiously*, *with such and such an Intention*, &c. And these sometimes are raised by a just & reasonable Implication in Law, and sometimes are thrust in meerly to raise a *Presence* or colour of *Crime*, where there is really none. So that every *Fury-man* ought to understand this Distinction, where the Act or naked *matter of Fact* charged, is in it self a *Crime* or *Offence* against Law; as killing of a Man, levying of *War* against the King, &c. there the Law does in pleadings require, and will supply those words; and if the *Fury* do find, and are satisfied, That the Substance of the *Charge* is such a *Crime*, and the Person Guilty hereof; they are bound to find it, though no *direct proof* be made of those *Circumstantials*. But where the *Act* or *matter of Fact* is in it self-innocent or indifferent, there the purport of these Words (as that it was done *maliciously*, & with *such* or *such a Design*) is necessary to be proved; or else there is no *Crime*, and consequently no fit matter to be put to Tryal. In which Case, the *Grand Fury* is bound in Conscience and Law to return an *Ignoramus*, and *Petty Jury* *Not Guilty*.

## S E C T V.

*That Juries are not finable, or any way to be punished under pretence of going contrary to the Evidence, or against the Judges Directions.*

**M**uch of what we have said of the *Grand Juries*, is also applicable to *Petty Juries*, so that we need not repeat it, only must answer one Objection. Some *Jury-men* may be apt to say, ——— If we do not find according to Evidence, though we have reason to suspect the *Truth* of what they *Swear*, or if we do not find as the Judge directs, we may come into trouble, the Judge may Fine us, &c. ——— I answer, this is a *vain fear*: No Judge dare offer any such things; you are the proper Judges of the Matters before you, and your Souls are at stake, you ought to *Act freely*, and are not bound, though the Court demand it, to give the Reasons why you bring it in thus, or thus; for you of the *Grand Jury* are sworn to the contrary, viz. *To keep secret your fellows Counsel and your own*; and you of the *Petty Jury* are no way obliged to declare your motives, it may not be convenient. 'Tis a notable Case before the Chief Justice Anderson in Q. Eliz. days. A Man was Arraigned for Murther, the Evidence was so strong that 11 of the Jury were presently for finding him Guilty, the 12th Man refused, and kept them so long that they were ready to starve, and at last made them comply with him, and bring in the Prisoner not Guilty: The Judge, who had several times admonish'd this Jury-man to joyn with his Fellows, being surprized, sent for him, discoursed him privately, to whom upon promise of Indempnity, he at last own'd that he himself was the Man that did the *Murder*, and the Prisoner was innocent, and that he was resolv'd not to add Perjury and

and a second Murther to the first. — But to satisfy you, that a Jury is no way punishable for going according to their Conscience, though against seeming Evidence, and the Reasons why they are, and ought not to be question'd for the same, I shall here recite an adjudged Case, that of Bushel, in the two and twentieth Year of His Majesty, reported by the Learned Sir *John Vaughan*, whose Book is Licensed by the present Lord Chancellor, the Lord Chief Justice *North*, and all the Judges then in *England*: the said Case begins *Fol. 135.* and continues 150. The whole well worth Reading: but I shall only select certain Persons —

The Case was this.

**B**ushel, and others of a Jury, having at a Sessions not found Pen and Mead (Two Quakers) Guilty of a Trespass, Contempt, Unlawful Assembly and Tumult, whereof they had been Indicted, were fined Forty Pounds a Man, and committed till they should pay it. Bushel brings his Habeas Corpus, and upon the Return, it appeared he was committed, — For that contrary to Law, and against full and clear Evidence openly given in Court, and against the Directions of the Court in matter of Law, they had acquitted the said W. P. and W. M. to the great Obstruction of Justice, &c. which upon solemn Argument was by the Judges resolved, to be an insufficient Cause of fining and committing them; and they were discharged, and afterwards brought Actions for their Damage. The Reasons of which Judgment, are reported by Judge *Vaughan*, and amongst them he useth these that follow, which I shall give you in his own words.

*Fol. 140.* One fault in the Return is, That the Jurors are not said to have acquitted the Persons Indicted, against full and manifest Evidence, Corruptly, and knowing the said Evidence to be full and manifest against the Persons Indicted; For how manifest soever the Evidence was, if it were not manifest to them, and that they believed it such, it was not a finable Fault, nor deserving Imprisonment.

upon which Difference the Law of punishing Furors for false Perjuries, principally depends.

And Fol. 141. I would know, whether any thing be more common, than for two Men, Students, Barristers, or Judges, to deduce contrary and opposite conclusions out of the same Case in Law? And is there any difference that two Men should infer distinct Conclusions from the same Testimony? Is any thing more known, than that the same Author, and place, in that Author, is forceably urg'd to maintain contrary Conclusions, and the Decision hard which is in the Right? Is any thing more frequent in the Controversies of Religion, than to press the same Texts for opposite Tenets? How then comes it to pass, that two Persons may not apprehend with Reason and Honesty, what a Witness, or many say, to prove in the Understanding of one plainly one thing; but in the Apprehension of the other, clearly the contrary thing? Must therefore one of these Merit Fine and Imprisonment, because he doth that which he cannot otherwise do, preserving his Oath and Integrity? And this is often the Case of the Judge and the Jury.

And Fol. 142. I conclude therefore, That this Return, charging the Prisoners to have acquitted P. and M. against full and manifest Evidence first, and next without saying, that they did know and believe that Evidence to be full and manifest against the Indicted Persons, is no Cause of Fine and Imprisonment.

In the Margin of that Fol. 142. it is thus noted: Of this Mind were Ten Judges of Eleven; The Chief Baron Turner gave no Opinion, because not at the Argument.

And in the same Fol. 142. he saith, The Verdict of a Jury, and Evidence of a Witness, are very Different things, in the Truth and Falshood of them: a Witness swears but to what he hath heard or seen generally, or more largely, to what hath fallen under his Senses: But a Jury-man swears to what he can infer, and conclude from the Testimony of such Witnesses, by the Act and Force of his Understanding, to be the Fact inquired after; which differs nothing in Reason, though much in the Punishment, from what a Judge, out of various

various Cases consider'd by him, infers to be the Law in the Question before him.

If the meaning of these words, finding against the Direction of the Court, in matter of Law be, That if the Judge having heard the Evidence given in Court (for he knows no other) shall tell the Jury upon this Evidence, the Law is for the Plaintiff, or for the Defendant, and you are under the pain of Fine and Imprisonment to find accordingly; and the Jury ought of duty so to do: Then every Man sees, that the Jury is but a troublesome delay, great Charge, and no use in determining Right and Wrong; and therefore the Tryals by them may be better abolished than continued; which were a strange-found Conclusion, after a Tryal so Celebrated for many hundred Years.

It is true, if the Jury were to have no other Evidence for the Fact, but what is deposed in Court, the Judge might know their Evidence, and the Fact from it, equally as they, and so direct what the Law were in the Case; though even then the Judge and Jury might honestly differ in the Result from the Evidence, as well as two Judges may; which often happens; but the Evidence which the Jury have of the Fact, is much otherwise than that. For,

1. Being Returned of the Vicinage where the Cause of Action ariseth, the Law supposeth them thence to have sufficient Knowledge to try the Matter in Issue (and so they must) tho' no Evidence were given on either side in Court; but to this Evidence the Judge is a Stranger.

2. They have made Evidence from their own Personal Knowledge, by which they may be assured, and sometimes are, that what is deposed in Court is absolutely false: but to this the Judge is a Stranger, and he knows no more of the Fact than he hath learned in Court, and perhaps by false Depositions, and consequently knows nothing.

3. The Jury may know the Witnesses to be Stigmatized and Infamous, which may be unknown to the Parties, and consequently to the Court.

Fol. 148. *To what end is the Jury to be returned out of the Vicinage, where the Cause of Action ariseth? To what end are Hundredors be of the Jury, whom the Law supposeth to have nearer knowledge of the Fact, than those of the Vicinage in general? To what end are they challenged so scrupulously to the Array and Poll? To what end must they have such a certain Free-bold, and be Probi & Legales Homines, and not of Affinity with the Party concern'd? To what end must they have in many Cases the View for exacter Information chiefly? To what end must they undergo the Punishment of the Villanous Judgment, if after all this they implicitly must give a Verdict by the Dictates and Authority of another Man, under Pains of Fines and Imprisonment, when Sworn to do it according to the best of their own Knowledge?*

*A Man cannot see by anothers Eye, nor hear by anothers Ear; no more can a Man conclude or infer the thing to be resolved by anothers Understanding or Reasoning; and though the Verdict be right the Jury give, yet they being not assured that it is so from their own Understanding, are forsworn, at least in foro Conscientiæ.*

Fol. 149. *And it is absur'd to Fine a Jury for finding against their Evidence, when the Judge knows but part of it; for the better and greater Part of the Evidence may be wholly unknown to him, and this may happen in most cases, and often doth.*

*Thus far Judge Vaughan, whose words I have faithfully recited, and with it shall conclude this Subject; recommending those that would be further satisfied in the Law, touching the Power and Duty of Juries, to those two Excellent, Learned Treatises lately Published, the one Intituled, A Guide to English Juries, &c. to be Sold by Mr. Cockeril at the Three Legs over-against the Stocks-Market; the other, The Security of English-Mens Lives, or the Trust, Power and Duty of the Grand Juries of England, Printed for Benj. Alsop in the Paul-trey; both which are extreamly well worthy of every English-mans Perusal, that is liable to be call'd to that Office.*



*The Office and Duty of a Constable, Headborough, Tything-man, &c. in the various Cases and Circumstances that attend the Charge and Execution of these Offices according to Statute Law, Custom and Precedents, &c.*

THE Office of a *Constable* is of great Antiquity, Trust and Power; insomuch that these Officers were in antient Times reputed to be the Stay or Stability of the Kingdom, as appears by the old *Saxon* Words from whence the Word *Constable* is derived: And of *Constables* we find two degrees, viz. The *Constables* of *Hundreds*, and *Petty Constables* of *Parishes* and *Towns*, and so great is the Charge they take upon them, that the Law requires every *Constable* to be *idoneus Homo*, a Man fit for the Execution of the Office, and a Person indued with Honesty, Knowledge and Ability, or else great Mischiefs may happen by knavery or mistake: Insomuch, that a *Leet* chusing *Constables* unfit for the Place and Office, is liable to cause a Forfeiture of the *Leet*, and to render such a Choice void; and upon complaint made to Two *Justices* of the *Peace*, they may remove any *Constable* so unqualified, and elect and swear new ones; *Dalt. l. P. Chap. 16. Fol. 47. Steel's Repert. Fol. 21. Mich. 22. Car. 1. &c.*

As for the *High Constables*, they are usually chosen at the Quarter-Sessions of the *Peace* for the County, and may be sworn there, or else by Warrant from Sessions in such other place as shall be appointed, and the Election ought to be by the greater Number of the *Justices* of the Division, where they dwell, and in the *Manner* they are chosen; in the like manner they are to be removed, and by a *Statute* of the 34 of *Henry* the 2<sup>d</sup>. Two *Justices* of the *Peace*, the one being of the *Quorum*, may

appoint the *High Constables*, in *Wales*, 34 *Henry the 8. Chap. 26.*

If a *Constable* be lawfully chosen, and notwithstanding will not comply to take the Oath appointed to be administered to *Constables*, he may be bound over by the *Justices* to the next *Assize* or *Session* for the Contempt, and there prosecuted.

A *Constable* of a *Parish* or *Hundred*, may not constitute a *Deputy* to execute his Office, as some have been of Opinion, notwithstanding a *Deputy* may, under him, and in his Name, do many parts of his Office; but in case of defect, the *Constable* must answer for it see; *Bolsted's 3d. Part, Rep. Fol. 77, 78.*

And now the better to secure these Men in their Offices from the Prejudice and Anger of such as they may happen to displease, it is so ordered, that if any Action be brought against a *Constable*, *Headborough*, or their Assistants for any thing done by reason of their several Offices, they may plead the *general Issue*, and give the *Special Matter* in Evidence, 7 *Fac. 1. Cap. 5. 21 Fac. 1. Cap. 22. Windgate's Abr. Stat. Tit. Evidence.*

And if any Action be brought against them, it is so provided, that it must be laid in the County where the Fact was done, and they shall have double Costs if the Verdict pass for the Defendant, and this shall be recovered as other Defendants recover their Costs, 7 *Fac. (1.) Cap. 5. 21. Fac. (1.) Cap. 12. Windgate's Abr. Stat. Tit. Evidence.*

And now since a *Constable* must of necessity be sworn unto his Office, or else not qualified to hold it, it will be necessary to set down the Form of his Oath, that he may at leisure, consider it.

## The Form of a Constable's Oath.

**Y**OU shall swear well and faithfully to serve our Sovereign Lord and Lady the King and Queen, and the Lord of the Mannor, in the Office of Constable; you shall see the King's Peace to be well and duly kept and preserved to the utmost of your Power; you shall Arrest all such Persons as in your presence shall ride, or go offensively, or shall make, or commit any Riot, Affray, or other breach of the King and Queens Peace; you shall do your best endeavour, that the Statute of Winchester for the Watch in your Town be duly kept, and the Hue and Cry, and the Statutes for punishment of sturdy Beggars, Rogues, Vagabonds, Night-walkers, and other idle and wandering Persons, within your Liberties, be duly put in Execution; you shall do your best endeavour, upon complaint to you made, to apprehend all Felons, Borrators, Rioters, and Persons making Affrays; and if any such Persons shall make resistance with force, you shall levy Hue and Cry, and shall pursue them till they are taken; you shall have a watchful Eye to such Persons as shall maintain, or keep any common House or Place, where any unlawful Games or Plays are, or shall be used, as also to such Persons as shall frequent or use such places, or shall exercise, or use any unlawful Games or Plays there, or elsewhere, contrary to the Statute, at your Assizes, Sessions or Leets; you shall present all and every the Offence committed or done, contrary to the Statutes made and provided for the Restraint of inordinate haunting and ripling in Taverns, Inns, and Ale-houses, and for repressing of Drunkenness and prophane Swearing; you shall true presentment make of all Blood-shedding, Affrays, Outcris, Rescues, and other Offences committed or done against the publick Peace, within your limits; you shall well and truly execute all Precepts and Warrants to you directed from the Justices of Peace and others in Authority in this County; and you shall well and duly according to your Knowledge, Power and Ability, do and execute all o-

other things belonging to the Office of a Constable, so long as you shall continue in the said Office;

So help you God.

*The Office of a Constable in case of Affrays, or breach of Peace, &c.*

**I**F a Constable be present when one Man assaults another, or with violent Words, threatens to kill and beat any one, and be in a fury ready to break the Peace, the Constable, to prevent the threatned Mischief, may set the Offenders in the Stocks, or, according as their Quality requires, secure them in some safe place, until they may be carried before a Justice of Peace; and some hold, that a Constable himself may take a Bond of Surety to the use of the King, being sealed and delivered; but if this were granted, it is more safe, and less trouble, to the Constable, to be done before a Justice of Peace; for in any case where such Constable had taken such an Obligation, for the King's use, he was obliged to be at the Charge of sending it into the Exchequer or Chancery, from whence Process was awarded in order to levy the Penalty as a Debt to the King, if the Peace happened to be broken.

If a Constable be present at an Affray, he has Power to command the standers-by to assist him, in keeping the King's Peace, and if he use not his endeavour to do it, the Inquest may Indict him, at the Sessions of Peace, and there he may be fined at the Discretion of the Justices for a neglect of his Duty.

If it so fall out, that any Person be dangerously hurt in the Affray, the Constable, or any Person may secure the Offender without a Warrant, till he can be carried before the next Justice of Peace; and if there be danger of Life, the Offender is to be committed to Goal, till it be known whether the wounded Party will live or &c. If the Constable or any of his Assistance be slain by

by the Affrayers, in endeavouring to part them, it is Murther in the Affrayers; and if the Affray be in a House, and the Doors shut, if it be suspected to be dangerous, he may break the Doors, to see the Peace kept, though none of the Parties have taken hurt; and altho the Affrayers fly to another House, he may upon a fresh Pursuit, follow them in the like manne.

If the Affrayers fly into another County, the Constable may freshly pursue, or cause them to be pursued, and to be taken there; yet in such a Case, he can meddle no further as being out of his Jurisdiction, but as a private Man may do, to carry them before a Justice of the Peace of the County, where they are taken, to cause them to find Sureties for the Peace. And further, it is held, that a Constable or Headborough cannot, without a Warrant, Arrest any Affrayer, if the Affray be over before he comes, except some Person be in peril of Death, by a hurt received in it; if a Constable come during the Affray, and charge the Breakers of the Peace, in the King's Name, to desist, he may Command assistance to pacifie them; and if resistance be made, he may justifie the beating or wounding of such as oppose him in the Execution of his Office, and may put such Affrayers in the Stocks, till he can carry them before a Justice of Peace; or if that be not sufficient, he may secure them in the next Goal: and indeed, in these Cases, his Power is very large, if there be a just Cause in the Execution of his Office, for it is the King's Peace.

*The Office of a Constable relating to Alehouses, &c.*

**I**F a Warrant from a Justice of Peace be directed to the Constables and Church-wardens against an Inn-keeper, Ale-house-keeper or Victualler, for suffering excessive drinking in his House, or for the defect in Measure of Ale or Beer, and no distraint or levy be made of the Forfeitures, according to the Statute, viz. 20 s. for sel-

ling less than a Quart of Ale and Beer, or two Quarts of small Beer for one Penny, and 10 s. for tipling in his House, or if no distress is to be found in his House, and the Officer neglect by the space of Twenty Days, to certify the Default of the Distress in any of the Cases to the *Justices*, he shall forfeit 20 s. to the Use of the Poor, to be levied, by virtue of a Warrant on his Goods, or if a neglect be in executing a *Justices* Warrant against any for being drunk, the Penalty being 3 s. 4 d. for tipling, and 3 s. for being drunk, to be levied by distress on the Offenders Goods, to be sold in six Days, and the Overplus returned, or for want of what to distrain, to endure six Hours in the Stocks, then the Officer is to forfeit 10 s. to the Use of the Poor, to be levied by distress upon his Goods.

He that keeps an Ale-house without a License forfeits 20 s. to the use of the Poor, which the *Constable* and *Church-wardens* upon Warrant from the *Justice of Peace*, before whom the Offence is proved, shall levy by distress upon the Offenders Goods, and for default of payment, the said Distress to be sold within Three Days, and satisfaction being had, the Overplus to be returned to the Owner, and if the Delinquent have not where-withal to satisfy the *Justice* or *Justices* may commit him to the *Constable* to be openly whipped, and if the *Constable* refuse to do it, then the *Justice* may commit him for such his refusal to the Goal without Bail; till he do fulfil the said Office, or pay Forty Shillings to the Poor of the Parish.

It is the *Constable's* Duty to compel any Ale-house-keeper or Inn-keeper to lodge any Traveller, paying, or proffering to pay, ready Money for what he has in the House; and if they persist to refuse it, he may indict them at the *Sessions* or *Assizes*, where they may be fined or imprisoned, at the Discretion of the *Justice*, or the Party grieved may have his Action on the Case against the *up-keeper* or *Ale-house-keeper*; but, by the way, it



is to be noted, ready Money is to be paid before hand, if by them required.

*The Office of a Constable about Arms, Clothiers and Customs.*

**I**F any ride armed offensively to give just suspicion of any force intended before the King's Justices, or other the King's Officers and Ministers, during their Office, or in Fairs, Markets, or elsewhere by day or night, in such cases, the *Constable* may seize and take away their *Armor* and other *Weapons*, and cause them to be apprehended, and carried before a Justice to find Sureties for the Peace; but this extends not to the King's Servants in his presence, Sheriffs and their Officers, and other the King's Ministers, and such as are aiding them in the Execution of their Office, or pursuing in *Hue and Cry*, such being allowed lawfully to bear Arms, and as well *Higb Constables* as *Petty Constables*, and other Officers, within their several Parishes, and districts, are to be assisting and aiding to such Persons as have Warrants from the Lord-Lieutenants of the Counties, or any two of their Deputies, under their Hands and Seals, to search for, and make seizure of, such Arms as are found in the Possession of Persons, adjudged by the Lieutenants, or their Deputies, to be dangerous to the Peace, and to give account of what they find to the said Officers; but this search, to prevent giving unnecessary disturbance, is to be made in the day time, between Sun-rise and Sun-set, and not else; except in Cities and their Suburbs, Towns corporate, and Market Towns, or Houses within the Bills of Mortality, in which places, search may be made by Night, if it be so directed by the Warrant. But no search to be made in the House of a Peer, unless the Warrant be from the King under his Signet, or in the Presence of the Lieutenant, or of the Deputy-Lieutenants of the County, or riding, and where

where resistance is made, a forcible Entry may be made, and such Arms so seized, they may, if the Lieutenants or their Deputies think fit, be restored to the Owners; See the Stat. of 14 Car. 2. Cap. 3.

The Constables upon the Request of the Wardens and Assistants for regulating the Trade of Woosted and other Stuffs made within the City of *Norwich* and County of *Norfolk*, 14 Car. 2. Cap. 5. The Constables within the West-ridings of the County of *York*, are upon a Warrant directed from the Justices of the Peace, Masters and Wardens of the Corporation of Clothiers within the said Ridings, or any Thirteen of them to levy such Fines, Forfeitures and Penalties as shall become due from any Clothier, by Virtue of an Act made in the 14 of King *Charles* the Second, by distress and sale of the Offenders Goods, the Overplus being rendered to the Owner.

The *High Constable* also or *Justices of the Peace* are empowered to search for Tenters, Ropes, Rings, Head-wranches, or other Engins for stretching of Cloth, and to deface them, and if the Owners shall use them, or any other again, then they may take them, and sell them, and give the Money to the Poor, 39th of *Elizabeth*. Cap. 20. 56.

As for the Constable's Office, relating to the Customs, if a Warrant come to him from the Lord Treasurer, or any of the Barons of the *Exchequer*, or chief Magistrate, of a Port, to any Person for the search of uncustomed Goods, the Constable, upon request, is to be aiding and assisting, and may enter into any House in the day time, where there is a Suspicion of Concealment, and in case of refusal or resistance, he may break up the House and take away and secure the concealed Goods: See 12 Car. 2 Cap. 19.

*The Constables Offices as to the King's Game; also about Escapes and Arrests, Excise and Fishery.*

IF a Warrant be directed to a Constable or Headborough, under the Hands of two or more Justices of the Peace, he may search suspected Houses for *Soring-Dogs*, &c. Nets for taking *Pheasants*, *Partridges*, &c. and destroy them if there found; but in this case such as have free *Warren*, or are Lords of any *Mannor* or *Freehold* of Forty Pounds *per Annum*, or more of Estate of Inheritance, or Eighty Pounds by the Year for term of Life, or be worth in Goods, Four Hundred Pounds, are exempted from such seizure.

In Escapes, if a Constable or other Person has a Prisoner under Arrest for Felony or Suspicion of Felony, and suffer him to go at liberty, though this be no breach of Prison: yet it is Felony in the Goaler, Constable, or him that letteth such Prisoner escape; but it is no Felony in the Prisoner, but if such a Prisoner escape against the Will of the Goaler or Constable, or, by their negligence, then it is Felony in the Prisoner, yet the Goaler, Constable, &c. may be fined by the Judges for such escape. If a Constable or other Officer shall voluntarily suffer a Thief (being in his Custody, to leap or go into the Water, and drown himself, this escape is Felony in the Constable, and the drowning makes it *Felo de se* in the Thief; but if it be done without the Consent of the Constable, then it is only a negligent Escape, and amounts to no more than a Fine in the Constable.

If there be only a Suspicion of Felony, and it appear there is no real Felony, then may the Constable discharge the Prisoner, and it is no escape, but the contrary, where one is arrested upon suspicion, and there is really a Felony, for there the Prisoner must be set at liberty.

by due course of Law, or else it is Belony in the Constable, or at least finable. If a Felon be pursued, and he fly into another County before he is taken, he must be carried before a Justice of Peace in the County where he is taken, and must be, if occasion require it, committed to that Goal, although the Felony was committed in another County.

If a Felon arrested for Felony, and a Goaler refuses to receive him, he must yet detain him, and some hold, the Town where he was taken is liable to keep him, till he can be sent to Prison; yet for such refusal the Goal-keeper lies liable to be punished by the Justices of Goal delivery, and a Constable may pinion, or otherwise secure his Prisoner in his way to the Justices, or to Prison, or may lock the Stocks wherein any Felon is imprisoned, or put Iron on him, if he be unruly.

As to the Excise, the Constable is to be aiding and assisting to the Gaugers and Under-Officers imployed therein, and to go with them (if required) in the Night time to the Houses, where any Liquors are to be Gauged, 12 Car. 2. Chap. 23, 24. They are moreover to levy Forfeitures, when a Conviction is made before the Justices or Commissioners of Concealment, Fraud or the like, and by Warrant to make distress and sale of the Offender's Goods, rendering the Overplus, and for want of distress, they are to carry the Party offending to the Goal, there to remain till satisfaction be made, and the Constables are further upon a Warrant directed from the Commissioners, to summon all Ale-house-keepers, &c. to appear before the said Commissioners of Excise at such Days and Places, as shall be appointed in the said Warrant from time to time.

As for the part of the Constable's Office, relating to Pilbery, he may by Warrant from a Justice of the Peace seize on such as destroy the Spaun, and breed of Fish along the Sea shoar, or in any Creek or Haven, or within five Miles of the Mouth of either of them, if they fish with Nets of less mesh than Three Inches and a Half between

between knot and knot, for which default the Offender is to pay Ten Shillings, and that to be levied upon his Goods, and upon sale the Overplus to be re-delivered, 3 Fac. 1. Chap. 12. Windgate's Abridgment Tit. Fish, Fishers and Fishing.

And according to the 18 of Charles the Second, Chap. 2. If any Hering, Ling, Cod or Pilchard, fresh or salt, dried or bloated, or any Salmon, Eels or Congers taken and brought in by Foreigners, and uttered to sale, it is lawful for the Constable or Headborough, &c. or any other Person to seize the one half thereof to the use of the Poor of the Parish, and the other to the Use of him, that seizes. If any one refuses to assist a Constable, upon an imergent Occasion, being commanded in the King's Name, he lies liable to be imprisoned or fined at the Discretion of the Justices.

*The Constable's Office touching Hue and Cry, Labourors and Servants, the Militia, &c.*

**W**hen the Hue and Cry comes, diligent search is to be made in all suspected Houses, within the Constables limits, and any suspected Person may be stayed, and carried before a Justice of Peace to be examined, what they are, and where they were at the time of the Felony or Murther committed, and if any neglect or default be proved in the Officer, he is liable to be fined before the Justices of the Peace.

If a Robbery be committed, and the Money lost be to be payed by the Hundred, and many refuse to pay, or contribute, in such a Case, Two Justices, one of them being of the Quorum, dwelling within the Hundred, may set a Tax upon every Parish within that Hundred, according to which the Constables and Headboroughs of every Town must tax the Inhabitants of their respective Constableries, and levy the Money upon such as refuse to distress as in other cases, and when the Money is gather-

ed, they are to deliver it to the same Justice, that made the Rare within ten days: But where such levies are made, the Robbery must be committed between Sun and Sun on the King's High-way, &c. or, if it be in the day time, and any of the Felons be taken and convicted, when it shall save the Levy, and the like, if the Action is not prosecuted within one Year after the Robbery is committed, and some deem a *Hue and Cry* illegal, unless the pursuit be made both by Horse and Foot.

As to Labourers, the Constable in Hay or Corn Harvest, upon request made to him, for the avoiding the Loss of Corn, Grain and Hay, may cause Artificers fit to labour to take Wages by the Day, for mowing and reaping, or for the getting in of Corn and Hay abroad, and if such able Persons shall refuse, the Constable may set them in the Stocks, by the Space of Two Days and one Night, and if in this case the Constable neglects to perform his Office he forfeits Forty Shillings, § *Eliz. Chap. 14.* and being once retained, they shall not depart, though his time be expired to another Town, or Parish without a Testimonial, viz. in a Town corporate under the Hands and Seals of the Magistrate, and Two Household-ers there, and in the Country under the Hands and Seals of the Constable or Constables, and Two Household-ers of the Parish, which Testimonial must be registered by the Minister; for which Two Pence is to be paid, but these Testimonials though they ought to be given are for the most part now laid aside, yet seeing the Law is in force, we shall set down the Form.



## The Form of a Testimonial.

**M**emorandum, that G.A. Servant to B. D. of Leeds in the County of York, Husband-man, is licensed to depart from his said Master, and is freely at his Liberty to serve elsewhere, according to the Statute in this Case made and provided, in Witness whereof we have hereunto set our Hands and Seals, on the 19 day of February, in the Third Year of the Reign of our most gracious Sovereign Lord and Lady King William and Queen Mary, Annoq; Dom. 1691.

If it be a Woman he served, you must put Mistress or Dame instead of Master.

As to the Constable's Office relating to the Militia, he is by Warrant for that purpose under the Hand and Seal of the Lord-Lieutenant, or any three or more of the Deputy-Lieutenants, to levy such Sums, Forfeitures, Penalties and Payments, as shall be charged upon any Person or Persons within the respective Constableries, for the furnishing Arms, Horse or Foot, or the Payment of Souldiers, &c. according to the Act of the Militia, 14 Car. 2. Chap. 14. and where sufficient distress is wanting, there the Lord-Lieutenant, or their Deputies by Warrant to the Constable may commit such defaulter to Prison, till, according to the Forfeiture and Payment he make satisfaction, 15 Car. 2. Chap. 4.

*The Constable's Office where Ministers are disturbed also in keeping the Peace, aiding Physicians and other things relating to the said Office.*

**I**F a Preacher or Minister, lawfully Licensed be disturbed in his Preaching of the Word, Praying or Administration of the Sacraments; either by Talking, Laughing, Huming or the like, any one of the Constables or the Church-wardens of the Parish, may of his, or their

own Authority, apprehend the Party offending, and carry him before a Justice of Peace in Commission for the same County, who upon due examination of the Matter, may, if he think fit, commit the Party to safe Custody, and within six days taking with him another Justice of the Peace may, upon further Examination and the Proof of Two Witnesses as to the Truth of the Matter, commit him to the County Goal to continue there Three Months, and from thence be brought to the next Quarter Sessions, at which, upon the Reconciliation of the Party, and upon his entering into a Bond for his good Behaviour for one whole Year, at the Discretion of the Justice, he may be released; but if he continue to be obstinate he must remain in Prison, without Bail, until he shall reconcile, and be penitent for his offence; and he that Rescues a Prisoner in this kind, shall suffer the like Imprisonment, and pay the Penalty of Five Pounds, and if the Inhabitants present suffer such an Offender to escape, they being presented before the Justices of the Peace at the Sessions within the County or Corporation, shall forfeit Five Pounds.

The Constable's Duty in keeping the Peace ought to be very circumspect, for, though he may do what he can, to keep the Peace, he cannot take Surety of the Peace at the Request of any Man.

The Breach of the Peace is taken many ways, as any injurious force or violence any ways used against the Person, his Possessions, Lands or Goods, whether it be furious Gestures, or threatening Words, or force of Body, or any such thing, to put one into terror and alarmment *Dalton's J. P. Chap. 3. Fol. 9.* But in this Case, a Constable ought to desire the Party to go, and put in Bail, but, if he refuse, he may Arrest him upon his Warrant, and secure him in a Goal, or in the Stocks, if no Justice is at hand to be found, nor is a Constable bound to go from place to place with any to find their Bail out; and note, That if a Constable have a Warrant to Arrest a Man, and he receive a *super sedas* out of Chancery, &c.

or from any other Justice of Peace of the same County, then is he to forbear serving it; for if the Surety be thus discharged, and the Officer will urge him to find Sureties, and upon his refusal Arrest or Commit him to Prison, then he shall have an Action of false Imprisonment against the Constable.

If any one shall abuse a Constable in the Execution of his Office, he may have the Party bound to his good Behaviour.

Upon Information, that a Man and a Woman be in Adultery or Fornication together, or of evil Report, and are gone to a suspected House together in the Night, he may follow them, and if he finds cause, carry them before a Justice of Peace, to find Sureties for their good Behaviour.

The Constables and other Officers in London, and within Seven Miles thereof, are to be assisting and aiding to the President of the Colledge of Physicians; and such as are authorized by the said Colledge, for the due Execution of the Statutes and Laws of the said Colledge.

*The Constables Office in the time of the Pleague or Mortal Sickness, carrying Prisoners to Goal, and pressing Carriages to the King's Use, &c.*

**I**N the time of the Plague, the Constable is commanded to order such as are infected to keep their Houses, and if any go abroad, and Converse amongst sound People, leaving a running Plague, Sore, and, if they have no Sore, they may be punished as Vagabonds, and be bound to their good Behaviour for a Year, and such Watchmen, as are appointed by the Constable, may keep such as are infected in their Houses by Force, and if they will offer to break out, and be wounded, the Watchman shall be indemnified: And if a Constable or other Officer shall neglect to Collect the Money for visited Towns, upon

a Warrant from Two *Justices* of the *Peace*, by distress or sale of Goods, for every such Offence, such *Constable* or *Officer* shall forfeit Ten Shillings to be employed towards the Use of the Sick, *Wingates Statute. Tit. Plague, &c.*

A *Constable* may, if there be any great Charge, in carrying a Prisoner to Prison, he may leavy it upon the Offenders Goods, but if he have none, it must be levied in the *Parish* where he was taken, by way of Tax, the *Constable*, Church-Warden, and two or three honest Inhabitants making it.

The *Constables*, upon Warrant from the *Justices* of the *Peace*, are to summon Carts and Carriages, able and sufficient to carry the *King's* and *Queen's*, or their Heirs or Childrens Furniture in their Progress to any Place, where they are to go, and to see they be able Teams of four Horses, or four Oxen and two Horses, and not to spare any for favour or affection gain or interest, upon pain of forfeiting Ten Pounds, and if any Carriage, so pressed refuse to go, and does not meet at the time appointed Place, the owner forfeits Forty Shillings, they are to have for every Mile they go Loaded Six Pence, and not to go above a days journey from home.

*The Constables Office in Routs and Riots, concerning Vagrants and Sturdy Beggers, Prophanè Swearing, and Prophanation of the Sabbath.*

**I**F there be a *Rout* or *Riotous Assembly*, the *Justices* may command the *Constables*, and all Temporal Persons above the Age of Fifteen Years, to Aid and Assist them in the quelling and suppressing them; and when they shall be reasonably requested to it, and they refuse, the *Justices* may Imprison the Refusers; a *Rout* is where three or more meet together, with an evil intent to beat, wound or break down any Fences, Inclosures, &c. though they only attempt it, and do not effect it, but when you effect, it is a *Riot*.

If any *Sturdy Rogue* or *Vagabond* be found wandering, The Constable, Headborough or Tything-man assisted by the Minister, and one of the Parish, is to see, or do it himself, such Rogue or Vagabond strip'd naked from the middle upwards, and to be openly whipped till his Body be bloody, and then to be sent away to the Place of his Birth, and if that cannot be known, then to the Place he Inhabited for a Year last past, before his punishment, and for defect of that knowledge to the Town, through which he last passed unpunished, or to the House of Correction, if it shall be seen fitting, there to Work till he shall be delivered by due Course of Law, and if he be discharged, he is to have a Testimonial under the Hand and Seal of the Constable, Tything-man, &c. and the Minister is to Register it under the Penalty of 5 l. The Form of which take as followeth:

*Richard Doe, a Sturdy Vagrant Beggar of middle Stature, Black Hair, &c. Aged about 30 Years, was the Second of April in the Third Year of the Reign of our most gracious Sovereign Lord and Lady King William*

and Queen *Mary of England*, &c. openly whipp'd at *St. Albans*, in the County of *Hertford*, according to Law for a wandring Rogue, and is designed to pass forth-with, from Parish to Parish by the Officers thereof, the next straight Way to *Lewis* in the County of *Sussex*, where he confesseth he was Born, and he is limited to be at *Lewis* aforesaid, within eight days next ensuing at his peril. Given under the Hands and Seals of *T. B. Minister of L.* after said *J. D. Constable* there.

In Case of *prophane Swearing*, for every time Twelve Pence is forfeited to the Poor, but then the Offence must be proved within 20 days by the Oath of sufficient Witnesses, or by the Parties own Confession before a *Justice of the Peace*, or Chief Magistrate of any City, Borough or Town Corporate, who shall Issue out a Warrant to the *Church-Wardens, Constables* and *Over-seers* of the Poor of the Parish, where the Offence was committed, and they are to Levy the Sum or Sums by Distress and Sale of the Offenders Goods, rendering the *Over-plus* to the Owner, 21 *Jac.* (2) chap. 20. 3 car. 1. ch. 4, &c.

Where no distress is to be had, the Offender, if above 12 Years of Age, shall be set in the Stocks, for the space of 3 Hours, but, if under 12 Years, and have nothing to pay, then he shall be whipped by the *Constable* or *Parents*, or *Master* in the *Constables* Presence.



*the Duty and Office of a Church-Warden, Side-man, Quest-man, &c. in what belongs to their Trust, and the Discharge of their Places, also Instructions for presentments and other things and matters relating to these Affairs.*

**T**HE Office of a Church-Warden is very Antient, and some will have it, to commence soon after Christianity was rationally settled; however, by the Antient common-Law they were, and are, to see the Goods of the Church preserved, as the Books, Communion-Plate, and decent Ornaments and Furniture of the Church, which shall be put to their Care and Charge at their entering upon their Office.

If we consider the Choice of these Officers, as appointed by the Book of Canons, Printed in the First Year of King James the First, Anno 1604. that all Church-Wardens, Quest-men, Side-men or Assistants in every Parish are to be chosen by the joynt Consent of the Ministers and Parishioners, if so it may be, but upon disagreement, the Minister shall choose one, and the Parishioners the other, to continue for the space of one Year, and no longer; unless a fresh Choice of the same persons be made, and this is to be done in Easter-Week, unless any Custom in a Parish alter the time.

These Officers are to see that all Parishioners make due resort to their Parish Church upon all Sun-days and Holy-days, and to continue the time of Divine Service; and if they find any tippling on these days in Inns or Ale-houses, at time of Divine Service, Preaching, &c. they are to carry them before a Justice of the Peace, who is to A-ercee them according to the Statute, and in case of non-payment to commit them to Prison, and the House to be fined Ten Shillings for suffering them so to do, and the Money to go to the Use of the Poor, nor are they suffer any extravagant, unruly, or disorderly Meetings

for Sports, or the like; especially on *Sundays*, &c. nor any Temporal Courts, Leets, Lay-juries, Masters, or any other prophane usage to be kept in the Church, Chappel or Church-Yard, nor the Bells to be rung, unless on futable Occasions, and further neither they, nor the Minister, are to suffer any Person to Preach within their Churches or Chappels, but such as shall produce their License to Preach, and is sufficiently authorized thereunto, and that all Persons excommunicated and so denounced, be kept out of the Church.

They are impowered to receive Gifts for the purchase of Furniture, or to the Advantage of the Parish, and may, as a kind of a Corporation, sue and be sued; but they cannot take an Estate of Land by the Name of *Church-wardens* only; for if a *Heoffment* be made to the *Church-wardens* of a Parish, it is a void Use; for they are not in a Capacity to take such a Purchase, nor can they subscribe to have Lands to themselves and their Successors; for they are no Corporation to have Lands, but for Goods only.

If any Man buy a Bell, or set up a Pew, or any other Ornament in the Church, it is a Dedication; and he cannot take it thence; the *Church-Wardens* in being, having Power to Sue them, upon any attempt of removal, as designing to take the Goods of the Church; but the Action must lye upon recovery of Goods to the Use of the Parish, and not their own, nor can the *Church-Wardens* give, sell, release or impair any Goods of the Church, without the Assent of the *Side-men* or Vestrey, and if they do, the new *Church-Wardens* may bring them to account.

But on the contrary if the Windows, Walls or Doors of the Church be broken down, the Grass in the Church-Yard eaten, or Trees cut down, then the Parson, not the *Church-Wardens*, is to sue the delinquents, the Body of the Church and Church-Yard, being in his care, and only the Moveables in the *Church-Wardens*.

The *Church-Wardens* by the Agreement of the Par-  
ishoner, or the major Part of them, may cause a ruinous  
Bell to be taken down and Cast, and may leave it in the  
founders Hands till he is paid, which will bar his Suc-  
cessor of that account.

*Further considerations relating to the Office and Duty of  
a Church-Warden, &c.*

THE repairing the Seats in the Church, depend upon  
the *Church-Warden*; but the disposing of the Seats  
in the Body of the Church belong to the Ordinary of the  
Diocess: so that he may place and displace whom he  
pleases, unless in some Cases.

Yet note, if a Man and his Ancestors, and all those  
whose Estates he hath, in certain Messuages, have, time  
out of Mind, used to repair an Isle, and sit there and  
none else, the Ordinary has no Power to displace him;  
for if he do; a Prohibition lies, because by Prescription he  
hath it for a reasonable consideration, and so in the Body  
of the Church, if it be by prescription, but if any Person  
prescribe to have a Pew in the Body of the Church, with-  
out minding to repair it, then the *Ordinary* may displace  
him, but he hath nothing to do in the Chappels belong-  
ing to Noble Men.

The *Church-Wardens* are to see, that the Church and  
Church Yard be kept clean and well repaired, and to pro-  
vide Books of *Common-Prayer*, *Homilies*, a *Parchment-Book*  
for Registering Weddings, Christnings, Burials, also  
they are to provide Fonts, Pulpits, Tables, Chests for  
Alms, Ornaments, and other Furniture, if wanting:  
As likewise Bread and Wine for the Sacrament, pro-  
portionable to the Number of the Communicants; and  
they have Power to rate the Parish for Money to do it,  
and if a Man have Lands in one Parish, and live in ano-  
ther, his Lands may not be charged on this Account,  
if he occupy those Lands, but if he Lease them out, the  
Lands

Lands cannot be charged in a Parish, where he is no Inhabitant.

Every *Church-Warden*, at the End of his Year, or within a Month after, must give a just Account before the Minister, and Parishioners of the Monies, that have been received, and what they have bestowed in reparation and other uses of the *Church*, and truly deliver up to the *Parishioners*, what Monies and other things of right belong to the *Church* or *Parish*, remaining in their custody; that by Bill Indent, it may be delivered over to the next *Church-wardens*, and, upon refusal, the next Visitation Court, they may be presented for such their refusal; or the *Church-Wardens*, their Successors, may have an Action of Account against them at common-Law, and if it appear, they have done the *Parish* any wrong, they are bound to make Satisfaction; yet they are to be allowed upon Account, all needful and necessary Monies laid out for the *Church*, or given to the Relief of such as they thought Objects of Charity, or otherways, where the Law does enjoyn them to pay or disburse any Money.

As for presentments, they shall not be compelled to any, having Ecclesiastical Jurisdictions above once every Year, in a Parish, where it has been no oftner used, nor above twice in any Diocess whatsoever, except upon the Bishops Visitation; for Registering, which Presentments no more than Four Pence shall be paid, yet the *Church-Wardens*, of their own accord, may present oftner according to the 116 Canon.

They shall not be troubled for not presenting oftner, nor upon any other account, unless it do appear, they did for favour or gain, willingly omit to present any Crime or Crimes, they knew to be committed, or unless there be a very just Cause for the Explanation of their former Presentments, and in case of such Omissions, the Ordinary may proceed against them, in the Ecclesiastical Court, and one time for Presentments, is usually a Week or Fortnight after *Easter*, at which time the

new Church-Wardens are to take Place, but are not to be sworn till the old Ones have given in their *Presentments*, and every Parson or Vicar, or the Curates in their lawful Absence are to joyn in every Presentment with the Church-wardens, Side-men and Quesh-men, and if the Church-wardens, &c. make refusal of presenting, then the Parson, Vicar or Curate, may present to their Ordinary, as they think fit, according to the 113. and 118. *Ex-emption*.

And the usual *Articles* given to Ground Presentments upon are, viz. Whether their Church, Chancel, Bells and Ropes be good and well repaired, and the Ten *Commandments*, *Lord's Prayer* and *Creed* drawn out in fair Letters, Assessments made for the repair of the Church, the Names of such as refuse to pay? Whether they have *Communion-Table*, *Carpet*, *Floor*, and other things necessary for the Use and Ornament of the Church and Church-Yard, and if the *Parsonage-house* and *Out-house* be in good repair?

Whether the Parson, Vicar or Curate, Read the *Common-Prayer* at Morning and Evening Service, with his Surplice, Preach every Sunday, read *Hamilies*, *Catechise*, &c. keep *Perambulations*, Preach sound Doctrine, and vent no sedition against the Government, that he celebrate the *Lord's-Supper*, at least three times every Year, whereof *Easter* for one, that he Baptize Infants with Godfathers and Godmothers, bury the Dead according to the *Book of Common-Prayer*, visit the Sick, and pray with them, preach in his *Gown*, and Marry none Clandestinely, that he be a sober Man, a Peace-maker, and live a chaste Life, read the *Book of Canons* to the People at least once every Year, and the 39 *Articles* twice every Year?

They are also in their Presentments to take notice, whether all their Parishioners, at due Age, resort to the Church to divine Service, and behave themselves reverently and decently there? And, whether any work or sell Wares on Sundays, &c. or Vintners, Villagers, In-

*Drapers*, or other receive any into their Houses, to tipple on Sundays?

Whether any be married within the prohibited Degree be *Adulterers, Fornicators, Swearers, Blasphemers, Drunkards, Sorcerers*, or the like? And if, all above sixteen receive the *Lord's-Supper*, at least, *thrice a Year*, *Easter* to be one? Whether any keep their Children unbaptized, and that Women, after their delivery, come due time to be Churched, or any bring not their dead to be buried, after the Service of the Church? If any have been married without Banns or License at unlawful hours? And whether their Alms-houses, Hospitals, School or Spittle, if any belong to them, be well and godly used, or any thing detained from it? What *Legacies* given to pious Uses, if the Parishioners be placed into Pews without strife or contention?

Whether the *Parish-Clerk* or  *Sexton*, if they have any, be duly chosen? If he can write and read, and be an honest Man, and make the Responses to the Hymns and other suffrages? If the *School-Master, Vicer, Chirurgien, Physician, Midwife*, &c. if any be in the Parish, teach or practice without License? If the *Church-Wardens* be duly chosen in the Week after *Easter*, by the Parson and Parishioners, according to the Canon or Custom? And if the old *Church-Wardens* have been careful to keep the Church in repair, to secure and preserve all the Furniture, and walk out of the Church in the middle of Divine Service, to visit *Ale-houses*, and *Tippling-houses* and other places, and to see who are evilly employed?

These are the Duties necessary to the Office of a *Church-Warden*, and may serve for Use and Instruction to those that are employed in these Affairs.



The Office of a Surveyer of High-ways, Bridges, Scavenger, and what depends thereon, &c.

These Officers were elected for a Year by the Constables and Church-Wardens of every Parish, and by the 14<sup>th</sup> of Car. 2. the Constables, Church-wardens or Tything-men of every Parish Town or Hamlet for the time being, are upon Monday or Tuesday in Easter-Week, together with the Advice of the major Part of the Inhabitants, to choose two or more sufficient Inhabitants of the Parish, Town or Hamlet, to be Surveyers of the High-way for the Year following, and notice is to be given to the Persons chosen in writing the Sunday after, and for default of such choice, the Constables, Church-wardens and Inhabitants of every Parish, &c. shall forfeit 5 L. 14 Car. 2. ch. 6. and upon notice they are to take the Office upon them, upon pain of forfeiting 20 s. and it is the Business of the Constables and Church-wardens, to appoint six days between the Time of the Choice and Midsummer for the Mending the High-ways; publick notice whereof is to be given in the Church, next Sunday after Easter.

The Publick Ways are called the King's High-way, free for himself and his Subjects, but if the Lord of the Soil find any digging or injuring them, or laying, nauseous Dung-hills or Lay-stalls; he may Indict them, or bring his Action.

The Surveyers are to oversee those that work on the days appointed for the digging and carrying Gravel, Stones, &c. and direct them where they shall lay them to the best Advantage; as for those that are to send to this work, it must be every Person, having in his own occupation, a Plough-Land in Tillage, or in Pasture, in the same Parish, or keeping there a Plough or Draught; shall find and send on every day to the place appointed, one Wain or Cart, after the Fashion of the Country.

with Oxen or Horses fit for carriage, and useful Tools fit for the Work, with two able Men, who shall do such Work, as is by the Surveyor appointed for the space of Eight Hours every Day, under the Penalty of 10 s. for each days default, and every other *Householder, Cottager, or Labourer*, not being a hired Servant, shall work in Person, or send an able Man under the Penalty of 10 s. the day he defaults.

And here it is to be noted, that all other Persons being no other ways chargeable, but as Cottagers by the 2 and 3 of *Philip and Mary*, yet if they be in subsidy 5 l. in Goods, or 40 s. in Lands, or above, they must find two able Men to work every of the six days 18 *Elix. chap. 9*.

If there be more Carriages than are necessary, it is in the discretion of the *Surveyor*, to appoint two able Men instead of a Team, on forfeiture of 12 d. each, in case of defect, and if six days suffice not for the Mending the Ways, the *Surveyors* may order a further time, but then they must pay for it, according to the Rate of the Country, and if they cannot agree, the next *Justice of Peace*, without the Parish must settle the Rate, according to the 14 of *Charles the 2 chap. 6*.

A Surveyor, if he want Materials to mend the Ways may go to any Man's Quarry, and take thence the small Stone or Rubbish without his leave, but must not dig in his Quarry, nor take the great Stones, he may do the like in any Man's Ground near the Road, where he supposes there is Gravel, or other fit Materials, not making the Pit above ten yards in breadth or length, and to fill it up when the work is over: but to dig in Gardens, Orchards or Meadows is barred; and if the Pit be neglected to be filled up for above the space of one Month, at the Charge of the Parish, then may the Owner sue for 5 Marks, and recover it by Action of Debt.

Owners of Ground, adjoining to the High-way, especially where the Ways are narrow, does not keep the Hedges low, and cut off the Boughs and Buries, that grow into the High-way, to hinder or offend Passengers, they upon a Presentment, or Indictment, forfeit 10 s. if any Man have a Ditch near the High-way and scower it not, so as to carry the Water out of the High-way, he shall forfeit 12 d. for every Rod so unscoured, 18 Eliz. ch. 10.

The Surveyer hath Power to make Sluces, and other conveniences for draining the Roads, or may turn a Water-Spring in the Roads, into any other Man's Ditch or Ground adjoining, without his leave; no Man is to cast his Soil out of a Ditch unto the Road, and suffer it to lye there for above the space of Six Months; but he is liable to pay 12 d. a Load, for as many as shall be adjudged to be there.

If a Presentment be made by a Justice of Peace, upon his own Knowledge, in Sessions, it shall stand good, and two Justices, one being of the Quorum, may amerce the fine, and may take an Account of Surveyors and Parish Constables for Amercements and Fines levied.

The Care of Bridges are likewise in the Surveyer, tho a decayed Bridge be repaired at the Charge of a Parish or Hundred, and sometimes a whole Country according to the extraordinary Charge it requires.

The Scavengers of London, Westminster, &c. are in the Nature of Surveyors in the Country, and there have Commissioners appointed over them, that have Power to regulate any Vault, Common-shore, or remove any Nuisance, and direct the Scavengers, and such like Officers for the carrying away the Filth, and every House-keeper in London and Westminster, and the Borough of Southwark, and places Adjacent are to sweep and cleanse the Streets, Lanes, Allies and Public Places before their Houses, on Wednesdays and Saturdays every Week, that they may be ready for the Scavenger to take away, on the Pen-

valty of Three Shillings, Four Pence for every neglect  
13 Car. 2 Chap. 2.

No Person whatsoever upon Penalty of Five Shillings is to throw any Dirt, Filth, Ashes or Nuisom Things into the Streets, Lanes or Allies, or against the Wall of any Church, Church Yard or any House, or throw unto any Vault or Sink; on pain of forfeiting for such Offence Forty Shillings, 14 Car. 2 Chap. 2.

No Man shall hoop, wash or cleanse any Barrels, or other Cask, or Vessels, nor set out any empty Coaches or mend, rough Timber to hew, or the like, in any of the Streets, Lanes, &c. nor saw any Stone there, on pain of Twenty Shillings for every Offence, and every Householder is to repair, and keep Paved, the Streets, Lanes &c. before his House unto the Channel, or middle of the Street, upon pain of 30 s. for every Rod that shall be defective, and so proportionable for a less quantity for every default, and 20 s. a Week, for every Week after, till it shall be well Paved and Amended.

And every Justice of either Bench, Barons of the Exchequer, or Justice of Peace, in the Limits aforesaid may upon their own knowledge or view, Confession of the Party, or one witness, proving it upon Oath, Convict any Person of the Offences aforesaid; whereby they shall incur the Penalties aforesaid, one Moiety to the Cleansing and Repairing of the Streets, &c. and the other to the Discoverer, but in case the Justice upon his own knowledge or view Convict the Party, then all the Penalties is to be employed for repairing the Streets, or Place, where the Offender lives, and the Forfeitures are to be levied by distress and sale of Goods, upon a Justice of Peace's Warrant, and for default of distress and non-payment in six days after notice is left in writing at the Party's House, the Justice may cause him to be Arrested and imprisoned, till he pay the Penalty, unless he be a Peer of the Realm, 14 Car. 2 Ch. 2.

Within

...his *London*, and the Liberties appertaining there-  
to the *Scavengers*, Rakers and such like Officers are  
to be Elected, and such Payments made by the Parish-  
wards to them for Cleaning the Streets, as by Use and  
Custom appears to be given, and in *Westminster* they  
are to observe their Custom in Election and Payment  
afore said, and for these *Cities*, Tradesmen shall be  
chosen to bear the Office, which Persons being con-  
firmed, under the Hands of two Justices of the Peace  
within their Limits, &c. are within sevendays after,  
to take on them the said Office, on pain of Twenty  
pounds for every refuser, and if others be chosen,  
and refuse, they run the same Risque; which Penalties  
are to go towards the Repairing of the Streets of  
the Parish, where they were chose, to be levied  
by distress and sale, by Warrant, &c. and for want  
of distress or non-payment, within six days after notice,  
the offender to be committed to Prison, till the Debt  
be paid, and within Twenty Days after the Election,  
the *Constables* and other Officers and Inhabitants may  
set a Rate, according to the Pound-Rate, to be set  
upon the Inhabitants of the Parish, Ward, &c. for  
the Year following, which being confirmed and al-  
lowed by two Justices of the Peace, shall yearly  
be paid by every Inhabitant upon demand thereof  
by the *Beadle*, or other Officer of the Parish, ap-  
pointed to Collect the same, and upon refusal, distress  
to be made, and for want of it, the Party Imprisoned,  
if not a Peer; and thus much may suffice for direc-  
tions in these Offices which we doubt not but will turn  
to good Account.

And now I shall take leave of the Reader, who, I shall  
hope, will joya with me and all English Protestants in this  
Prayer:

THAT

**THAT** ~~displeased~~ would protect our Religion, put  
a stop to the Growth of Popery, Confound all the  
Plots, Protect our present Gracious King and Queen, Defend  
us from a Foreign Yoke and Domestick Slavery, but continue  
us in the Enjoyment of our good old Laws, Liberties and  
Privileges; and bring all these to exemplary Justice who  
have or shall dare attempt to subvert, diminish or undermine  
them. Amen.

**F I N I S.**



Remarks

How differently they thought of their Liberties  
in those days (p. 1-134) how grateful & proud  
they felt respecting their two paramount  
privileges (5) of

Parliaments — 4. 68. 84. 88 and

Juries — 4. 133

Besides which they <sup>had</sup> desired other privileges  
and wise Laws viz

The incomparable Law called Magna  
Charta — 5. 28

No Monopolies permitted — 22

The blessed Statute of Treason, 37

No Popery and Slavery — 70. 86. 129. 134

The glorious Balance of the three Estates  
of Parliament — 73.

The excellent Bill of Rights — 91

No forced Loans — 94

That most wholesome Law called

the Habeas Corpus Act — 97. 108

The abolition of the arbitrary Star  
Chamber — 115

Liberty of Conscience (by the Toleration  
Act) — 124

Annual parliaments and Universal suffrage  
they never thought of — neither does it appear  
that they perplexed themselves about Reform —  
Law proceedings — Trials — Taxation — Places  
& Pensions, Catholic emancipation, Free trade &c  
— now we are so fastidious, that

The Licence on the back of the Title page

The Laws against Sedition — 48. 76

The Interference of the House of Commons — 82

The Laws against Popery — 129

The Laws against Vagabonds — 171

would be thought most tyrannical  
Probably when the Author made his saying  
as to the then Judges at p 136, he had the Enact-  
-ment at p 48 in his recollection

Burning a Woman for the sake of Modesty  
instead of also quartering her - (p 56) is an  
unexpected piece of Delicacy

